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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ROBERT HALL LEWIS, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

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ROBERT HALL LEWIS, JR.,
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vs.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

Robert Hall Lewis, Jr., petitioner herein, prays that a writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the case of United States of America vs. Robert Hall Lewis, Jr., on the 20th day of November, 1964, and denying a Petition for Rehearing on February 10, 1965, being its case No. 15699. These Opinions are not "officially" reported to date and are attached hereto as Appendix 110a and 117a.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked by virtue of Title 28, United States Code, Section 2101 on Writ of Certiorari.

(i) The judgment sought to be reviewed affirmed the conviction of petitioner on November 20, 1964, and;

(ii) A petition for rehearing was denied and the final order was entered on February 10, 1965. No extension of time to petition for certiorari was granted, however, an order was entered staying the issuance of mandate for thirty (30) days, on February 22, 1965.

(iii) Jurisdiction to review the judgment in question is conferred upon this Court by virtue of Title 28, United States Code, Section 1254.

QUESTIONS PRESENTED FOR REVIEW

1. Is a defendant in a criminal case granted a fair trial where the trial court repeatedly interrupts defense counsel; the trial court asks in excess of eleven hundred questions in three and one-half days of testimony; and the trial court elicits incriminating facts concerning the defendant which would be improper for counsel to offer in evidence?

2. Where, after trial and conviction of the defendant in a criminal case, the major prosecution witness signs an affidavit admitting that his testimony against the defendant was false at the trial and said prosecuting witness is called to testify at the hearing on a motion for a new trial concerning his affidavit, is the defendant deprived of substantial rights by the trial court's refusal to permit defense counsel to ask any questions of said prosecuting witness?

3. Where the major prosecution witness recants his testimony against the defendant by affidavit and by later testimony, is the defendant entitled to a new trial?

THE LAW INVOLVED

1. Vol. 1 United States Code Amendment V, Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. Vol. 1 United States Code Amendment VI, Constitution of the United States:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

3. Vol. 1 United States Code Amendment XIV, Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The defendant in this action, Roebrt Hall Lewis, Jr. a citizen of the United States, was tried for the offense of unlawfully, wilfully and knowingly receiving and or possessing, concealing, or storing $7,500.00 knowing same to be proceeds from the robbery of the Ohio Federal Savings and Loan Association. The prosecution contended that shortly after a robbery of the Ohio Federal Savings and Loan occurred, the defendant received money from one Charles Edward Bebout, an alleged accomplice and witness at the trial of the defendant; that defendant thereafter wrapped and gave the currency to Charlotte See, also called as a witness, from whom the package of money was supposedly stolen by a third party, to-wit: Jim Long.

The trial began on September 17, 1963, and continued to September 23, 1963. The trial resulted in a finding of guilty and the defendant was sentenced to ten years in a federal prison.

Throughout the course of the trial the court continuously interrupted the defense counsel's interrogation of both prosecution and defense witnesses and proceeded with lengthy and improper interrogations of almost every witness called to testify. In these separate examinations the Court asked leading questions of witnesses; permitted the introduction of hearsay evidence; and in general interrupted to such an extent that, for all practical purposes, the defendant's right to counsel was infringed upon in violation of the United States Constitution.

This continuous intervention and interruption by the trial court can only be shown by asking this Court to examine the rather lengthy appendix attached hereto, which is for the most part made up of the trial court's questions and the answers thereby obtained.

While the case was pending appeal in the United States Court of Appeals for the Sixth Circuit, Charles Edward Bebout signed an affidavit stating that all of his testimony against the defendant was false. A motion for a new trial was filed based upon the affidavit and Bebout was brought from the United States Penitentiary at Marion, Illinois and testified at the hearing on the motion for a new trial. The trial court refused to permit defense counsel to question Bebout and refused to permit Bebout to have his counsel present. After telling Bebout he could claim his rights under the Fifth Amendment, the trial court questioned him and Bebout did testify and insisted that he had lied at the trial. He positively testified that the defendant was not guilty of the crime of which he had been convicted.

The trial court had jurisdiction of the matter since the defendant was charged with violating Title 18, Section 2113(c) of the United States Code, to wit:

> Unlawfully, wilfully, and knowingly receiving, possessing, concealing, storing and disposing of money of an amount in excess of $100.00, to-wit: $7,500.00 in currency of the United States, from one Charles Edward Bebout well knowing said money to have been stolen from the Town and Country Branch of the Ohio Federal Savings and Loan Association, Whitehall, Ohio, which was insured by the Federal Savings and Loan Insurance Corporation, an agency of the United States government.

REASON FOR GRANTING THIS WRIT

The United States Court of Appeals for the Sixth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court, and said Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the trial court, as to call for an exercise of this Court's power of supervision.

ARGUMENT

QUESTION 1

IS A DEFENDANT IN A CRIMINAL CASE GRANTED A FAIR TRIAL WHERE THE TRIAL COURT REPEATEDLY INTERRUPTS DEFENSE COUNSEL; THE TRIAL COURT ASKS IN EXCESS OF ELEVEN HUNDRED QUESTIONS IN THREE AND ONE-HALF DAYS OF TESTIMONY; AND THE TRIAL COURT ELICITS INCRIMINATING FACTS CONCERNING THE DEFENDANT WHICH WOULD BE IMPROPER FOR COUNSEL TO OFFER IN EVIDENCE?

As heretofore stated, the only way in which the writer can properly present this question of intervention by the trial court is to request this Court's indulgence in examining the Appendix, however, we will cite various sections of the Appendix in the course of this argument.

For example, at page 10a of the Appendix, just as counsel for the defendant was obviously about to ask the crucial impeaching question of the witness, the Court interrupted the cross-examination and said:

"Let me ask a question."

The court then proceeded with twenty-five pages of questions after which he adjourned for the day leaving the jury to consider over night his next to last question as follows:

"The Court: Did you call Mr. Lewis?

"The Witness: No.

"The Court: To inform him as to what it was happening to the money that he left with you?"

This was the one big issue in the case. Did the defendant or Charles Edward Bebout leave the money with her? The defendant denied it—but the trial court made the bold face statement of fact to the jury that it was the defendant.

Another example, at page 8a of the Appendix as follows:

"Mr. Britt: I think that is all.

"Mr. Bell: No further questions. You may step down.

"The Court: Just a moment. How did you happen to meet at the Kismet Bar?

"The Witness: Just happened to be there at the same time.

"The Court: You were not called or there was no pre-arranged meeting?

"The Witness: No.

"The Court: How long did you talk to Mr. Lewis at that time?

"The Witness: Just a matter of minutes. I didn't care to discuss it.

"The Court: Are you saying by that or do you mean by that that he attempted to pursue you to discuss it further, or did he not?

"The Witness: That ended the conversation when I said that I wasn't going to lie for anyone.

"The Court: Well, did he ever use a word like 'lie' with you at that time? Did he say lie?

"The Witness: No, I don't believe so.

"The Court: When you discovered that there was money in the package after you talked to Mr. Long—is that correct?

"The Witness: Yes.

"The Court: — did Mr. Long tell you how much money was in the package?

"The Witness: No.

"The Court: Did he in any way characterize the amount by saying it was a lot of money or some money, or just money?

"The Witness: He said it was money, and I asked him, I said, 'Bring it back,' and he says, 'I have spent it.' and I says, 'Do you have any left?' He says, 'Yes.' I said, 'Then please come back in town with it.'

"The Court: How long have you known Long?

"The Witness: Maybe fifteen years.

"The Court: Did he come to your place frequently, to your home?

"The Witness: Yes."

The foregoing is typical of the trial court's intervention and questioning of witnesses, the form of questions asked by the court and the hearsay evidence thereby permitted to be considered by the jury. The foregoing questions obviously are leading, call for conclusions and bring before the jury conversations between other parties which did not take place in the presence or hearing of the defendant.

The record in this case is replete with innuendoes by the trial court, all favoring the prosecution. His refusal to permit an examination of Bebout at the motion for a new trial indicates to some extent his hostility; again it's shown when he pressed counsel to conclude the case with the statement:

> "Ladies and gentlemen of the jury, it is very important that you be here by 9:00 o'clock because this case must be concluded tomorrow. So when I say Court will adjourn until 9:00 o'clock tomorrow morning, I mean 9:00 o'clock. Everybody be here by 9:00 o'clock."

The prosecution had taken three days in presenting its case and the defendant was to be allowed that part of one day not consumed by final arguments, charge and jury deliberations.

The trial court's attitude was again shown when he elicited a story of "casing" an entirely different bank for bank robbery. That bank was not robbed at all. The defendant was never charged with any bank robbery. Certainly this was a situation so derogatory to the defendant in the eyes of the jury that the District Attorney would not, or should not, have been permitted to interrogate about it. However, the trial court opened the door and as a result the defendant was on the stand and had to answer it.

The due process clause of the Fourteenth Amendment requires the accused in criminal proceeding be given a fair trial. *In Re Murchison*, 349 U.S. 133, 75 Sup. Ct. 623, 99 LED 942; *Massey v. Moore*, 348 U.S. 105, 75 Sup. Ct. 145,

Powell v. Alabama, 287 U.S. 45, 77 LED 158, 53 Sup. Ct. 55; *Marelia v. Burke*, 197 F 2d 856; *Ex Parte Lee*, 123 F. Supp. 439; *McGarty v. O'Brien*, 96 F. Supp. 704.

As this Court held in *Quercia v. United States*, 289 U.S. 466, at page 470:

> "The influence of the trial judge on the jury 'is necessarily and properly of great weight' and 'his lightest word or intimation is received with deference, and may prove controlling.' "

To the same effect is *Gomila v. United States*, 146 F. 2d, 372; Syllabus 6:

> "Where testimony connecting defendants with crime charged was wholly that of accomplices and trial judge unnecessarily took an active part in prosecution, by taking away examination of witnesses from counsel who were properly conducting the examination, and by questions and comments showed a hostile attitude toward defendants, errors required reversal, though no objection was made nor any exception taken to judge's action during trial."

As was held in *Egan v. United States*, 287 F. 958:

> "The trial judge should be so impartial in the trial of a criminal case that by no word or act of his may the jury be able to detect his personal conviction as to the guilt or innocence of the accused."

In *Blumberg v. United States*, 222 F. 2d 496, syllabus 8 and 9 say:

> "A judge must not only be impartial and disinterested but must also appear so.
>
> "It is better for trial judge to err on the side of abstention from intervention in a case rather than on the side of active participation in it, especially when the major part if not all of his interruptions and interventions, though by chance rather than by design, are, or seem to be, on, or tending to be on, the side of government."

As is stated in *McCormick on Evidence*, page 13:

> "The judge in his discretion may examine any witness to bring out needed facts which have not been elicited by the parties. Accord: *Griffin v. U.S.*, 164 F. 2d. 903."
> "If the judge's questions are too partisan or even if they are too extensive, he faces the risk that the Appellate Court will find that he crossed the line between judging and advocacy. Accord: *U. S. v. Brandt*, 196 F. 2d 653."

It is respectfully submitted that the trial court did not elicit additional facts pertinent to the charge in question. In the *Brandt* case the judge was reported to have asked some 900 questions of witnesses. In the case at bar the trial court asked in excess of 1,100 questions.

As was held by the Court in *People v. Bowers*, 79 California 415, the court should never assume the position of counsel for either side, or arbitrarily take the examination of witnesses out of the hands of counsel.

In *McDonald v. State*, 89 Tenn. 161, 14 S.W. 487 at page 488 the court used the following language:

> "Courts are to try cases as made by the parties and not make the effort to suply what may seem to them missing links in the chain of testimony."

In *People ex rel. Lauchantin v La Coste*, 37 N.Y. 192, at page 196, the court held:

> "We do not understand that the court has any greater right to ask improper questions than counsel have."

Again in *Terrell v. U.S.*, 6 Fed. (2d) 498, at page 499, it is stated:

> "While the power exists it should be used sparingly and with great caution. The jury may gather from the questions asked the opinion of the judge on the merits or as to the credibility of the witness."

From the great number of questions asked by the trial court in the case at bar, as can be seen from a brief examination of the attached Appendix, this Court can readily see that the trial court took an overpowering role in the trial of the case. We urge the proposition that the trial court by intervening so frequently, asking leading questions, and eliciting improper answers, went completely beyond the bounds of judicial discretion and became in effect an aid to the prosecution rather than performing its proper role as a judicial arbitrator.

This action by the trial court was in direct deprivation of the Constitutional rights of the defendant.

QUESTION 2

WHERE, AFTER TRIAL AND CONVICTION OF THE DEFENDANT IN A CRIMINAL CASE, THE MAJOR PROSECUTION WITNESS SIGNS AN AFFIDAVIT ADMITTING THAT HIS TESTIMONY AGAINST THE DEFENDANT WAS FALSE AT THE TRIAL AND SAID PROSECUTION WITNESS IS CALLED TO TESTIFY AT THE HEARING ON A MOTION FOR A NEW TRIAL CONCERNING HIS AFFIDAVIT, IS THE DEFENDANT DEPRIVED OF SUBSTANTIAL RIGHTS BY THE TRIAL COURT'S REFUSAL TO PERMIT DEFENSE COUNSEL TO ASK ANY QUESTIONS OF SAID PROSECUTING WITNESS?

The testimony of Charles Edward Bebout at the trial was the only positive evidence to link the defendant with the crime charged. Bebout admittedly robbed the bank, pleaded guilty, and was sentenced to a federal penitentiary.

Approximately eight months after the trial, Bebout, of his own volition, signed the following Affidavit:

"AFFIDAVIT

May 18, 1964

"Charles E. Bebout, being first duly cautioned and sworn, saith that the following affidavit is given of his own free will and under no threat or promise:

"Affiant further says that the statements and testimony given before the Grand Jury in the case of the United States of America vs. Robert Hall Lewis, Jr., were obtained under duress and threat of prosecution to one Roy Jaynes and of affiant's mother, Bessie R. Bebout.

"Affiant further says that the Assistant United States Attorney General, Robert A. Bell, inferred and through misleading statements led affiant to believe that upon affiant's cooperation with the United States and their agents, affiant would receive a sentence similar in time to one Truman Webb, who testified in behalf of the United States against Richard Bostic.

"Affiant further says that all statements and testimony given against Robert Hall Lewis, Jr., implicating the said Lewis in a robbery of the Town and Country branch of the Ohio Federal Savings and Loan Association, on or about December 14, 1962, are and were false in every respect.

"Affiant further says that such crime was committed by the said affiant and that at no time were said facts disclosed to the said Robert Hall Lewis, Jr., nor did affiant ever turn over to the said Robert Hall Lewis, Jr., any of the proceeds of said robbery.

"Affiant further says that these facts and disclosures have been forwarded to Judge Carl Weinman, and U. S. Attorney, Robert Bell.

"Further affiant saith not.

"/s/ CHARLES E. BEBOUT

"Sworn before me this 18 day of May, 1964.

"Authorized by the Act of July 7, 1955 to administer oaths
(18 U.S.C. 4004)

"/s/ W. N. BARBER, *Counselor*,
U.S.P., Terre Haute, Ind."

Based upon this affidavit, the defendant filed a motion for a new trial and Bebout was brought from the Penitentiary and testified. When he appeared on the stand the following occurred, Record, page 27:

> "THE COURT: Well, it is your suggestion then that the Court examine him on the matter?
>
> "MR. BRITT: (Defense Counsel) We would be perfectly satisfied for the Court to do it, although we would have some questions we would like to ask him."

Again at page 28 of the Record:

> "MR. BRITT: We have some questions that we would like to ask him, your Honor, which we believe might have bearing * * *"

The trial court then proceeded to interrogate Bebout concerning his recantation and refused to permit counsel to ask any questions. When the court completed his questioning, the following occurred, at page 46 of the Record:

> "MR. BRITT: Is that all, your Honor?
>
> "THE COURT: That is all. Anything further, Mr. Bell? (District Attorney)"

Certainly this is a clear showing of abuse of discretion by the trial judge as was held in *Winer v. United States,* 228 Fed. 2d 944, certiorari denied 351 U.S. 906.

As is stated in 24 *Corpus Juris Secundum,* Section 1503, Examination:

> "* * * where the motion is based on a recantation of witnesses who testified on the trial for the prosecution, such witnesses should, it has been held, be placed on the stand and should be subjected to the test of cross-examination where there are features of the case sufficiently unusual and suspicous to require a searching investigation."

Citing *People v. Shilitano,* 109 N.E. 500, 215 N.Y. 715. To like effect, *People v. Giordano,* 175 N.Y.S. 715.

It should be pointed out that Bebout was called as a witness by the trial court at the hearing for a new trial. The advocacy tactics of the trial court, in not permitting counsel to cross-examine the witness, are but one more example of the demeanor of the trial court during the trial and in the presence of the jury.

Failure to afford *a reasonable* opportunity to defend against a charge is a denial of due process of law. *In Re Murchison,* 349 U.S. 133, 134; *Williams v. New York,* 337 U.S. 241, 245; *Paterno v. Lyons,* 334 U.S. 314, 320; *In Re Oliver,* 333 U.S. 257, 273; *Cole v. Arkansas,* 333 U.S. 196, 201.

Again, it should be emphasized that the constitutional rights of the defendant were violated.

QUESTION 3

WHERE THE MAJOR PROSECUTION WITNESS RECANTS HIS TESTIMONY AGAINST THE DEFENDANT BY AFFIDAVIT AND BY LATER TESTIMONY, IS THE DEFENDANT ENTITLED TO A NEW TRIAL?

In the case of *Beyda v. United States,* 324 F. 2d 529, the requirements to be met for obtaining a new trial are set out as follows:

"1. The evidence must be new.
2. It must infer a fact which the Court may infer diligence for the movant.
3. It must not be cumulative or impeaching.
4. It must be material.
5. It must be such that a new trial would probably produce an acquittal."

It is respectfully submitted that all of these requirements were met, or without question could have been met, had counsel been permitted to interrogate Bebout completely concerning his recantation.

The case of *United States v. Troche*, 213 F. 2d 401, is directly in point. It holds that recantation by a material witness is grounds for a new trial if the Court is reasonably well satisfied that the testimony at the trial was false.

We call this Court's attention to page 45 of the Record of the Motion for a New Trial concerning the truth or falsity of the recantation. Bebout had just read the affidavit, particularly the part concerning the Defendant:

> "THE COURT: Now, I am asking you one question with regard to what you have just read. Is what you have just read true? Now, before you answer it, you don't have to answer that if you wish to claim the protection of the Fifth Amendment. I thought you said you were willing to waive protection of the Fifth Amendment with respect to that question.
>
> "THE WITNESS: I can for the one question.
>
> "THE COURT: Well, I am not going any farther with it, frankly.
>
> "THE WITNESS: Oh.
>
> "THE COURT: Do you wish voluntarily, knowing that you do not have to answer this question and I will not force you to answer it either way, do you wish to answer whether that statement which you have just read from that affidavit is true or false?
>
> "THE WITNESS: I wish to answer that question with no reservation.
>
> "THE COURT: All right. Now, tell me, is that statement true or is it false?
>
> "THE WITNESS: That statement is true in every respect."

Such positive evidence, under practically a threat of perjury prosecution, must be true. Based upon it, a new trial should have been granted.

This Court has never clearly defined the necessary requirements for obtaining a new trial where *the* prosecuting witness later recants his testimony. This important question of federal law should be settled by this Court.

CCNCLUSION

By reason of the foregoing, Petitioner respectfully pra
this Court that his petition for Writ of Certiorari to t
United States Court of Appeals for the Sixth Circuit
granted.

Respectfully submitted,

JAMES C. BRITT,
297 So. High St., Columbus, Ohio,
Attorney for Petitioner.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION
CRIMINAL No. 8263

Count 1

[Filed March 21, 1963]

That on or about December 14, 1962, at Columbus, Ohio, a place within the Eastern Division of the Southern District of Ohio, ROBERT HALL LEWIS, Jr., did unlawfully, wilfully, and knowingly, receive, possess, conceal, store, and dispose of money of an amount in excess of $100.00 to-wit: Seventy-five hundred ($7500.00) Dollars, in currency of the United States, from one Charles Edward Bebout; said defendant then and there well knowing said money to have been unlawfully taken and carried away by the said Charles Edward Bebout with intent to steal and purloin said money from the care, custody, control, and management of the Town and Country Branch of the Ohio Federal Savings and Loan Association, Whitehall, Ohio, a savings and loan association the deposits of which were at the aforesaid time insured by the Federal Savings and Loan Insurance Corporation, an agency of the United States Government. In violation of 18 USC 2113(c).

JOSEPH P. KINNERY,
United States Attorney.
/s/ ROBERT A. BELL,
Assistant United States Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ROBERT HALL LEWIS, JR.,
Defendant-Appellant.

PROCEEDINGS

Before The Honorable Frank J. Battisti, September 17, 18, 19, 20, 23, October 1, 1963.

Charlotte See

Cross Examination

* * * * * * * * * * *

(T. 32)

A. As near as I can judge or remember about it.

Q. All right. Now, isn't it a fact that of the 12 to 50 people who were in your home immediately prior to Christmas, that many of them, to your knowledge, have criminal records?

Mr. Bell: Objection, Your Honor.

(T. 33)

The Court: Sustained. The jury will disregard it as though it had never occurred in this court room. Just disregard it.

Mr. Britt: May I approach the bench one moment, Your Honor?

The Court: Yes.

(Conference at the bench.)

The Court: Again, ladies and gentlemen, disregard the statement of counsel. The witness did not answer so you need not concern yourselves about what the witness might have said Don't speculate on it at all. You will be fully apprised later on in my instructions of law that statements of counsel are not evidence, and that was not evidence. Disregard it, obliterate it from your mind as though it had never occurred here.

Proceed.

* * * * * * * * * * *

(T. 43)

Q. Isn't it a fact, Miss See, that there was an occasion where you said something to Bob Lewis that Jim Long had told you there was money in the package and Bob laughed and said, "Well, he is a liar." Didn't that happen? A. I don't remember this.

Q. Would you deny that that happened?

The Court: Don't answer that.

* * * * * * * * * * *

(T. 50)

Redirect Examination

By Mr. Bell:

Q. Did you see Mr. Lewis in April of 1963. A. I believe it was April.

Q. Where did you see him? A. In a bar.

Q. What was the name of the bar? A. Kismet.

Q. Where is that located?

Mr. Britt: Your Honor, I don't believe—I am going to object to this as not being proper rebuttal.

Mr. Bell: I am not rebutting anything. It is redirect.

The Court: I don't know what is going to be developed yet. Overruled. Proceed.

Mr. Bell: We will reserve that, Your Honor. I have no further questions.

The Court: Reserve it?

Mr. Bell: I have more to go but I would like to—withdraw those questions at this time.

(T. 51)

The Court: Just a moment. Come up here.

(Conference at the bench.)

The Court: Proceed, Mr. Bell.

Q. I believe you testified that you saw Mr. Lewis at the Kismet Bar in Columbus, is that correct? A. That's right.

Q. That was in April of 1963? A. Correct. I believe it was in April.

Q. Did you have a conversation with him at that time? A. Yes.

Q. Tell us what that conversation was? A. He asked me if I couldn't say that the box was left there for Jim Long.

The Court: You will have to keep your voice up. I can hardly hear you here.

A. He asked me if I would say that the box was left at my home for Jim Long.

Q. What was your answer? A. I said, no, I had been under oath, I had told the truth and I wouldn't lie for him.

Mr. Bell: No further questions.

Mr. Britt: Your Honor, we wish to move that this testimoney here all be stricken as not being in any way proper redirect and that the jury be instructed to disregard it.

(T. 52)

The Court: I will permit you to cross examine on it but I will say to the United States Attorney at this time, when you have matters of this kind to be brought out, this may just as easily have been brought out on direct examination as on redirect. If it was overlooked, that is one thing, if somehow it was forgotten. This is a trial in which we are

engaged and should be engaged in a search for truth and justice. All testimony that will bear on an ultimate conclusion of truth and justice should be admitted. Thus, I will permit this evidence and give you every opportunity to cross examine, rebut and so forth. But, both of you gentlemen know the rules and the United States Attorney certainly does. Bring these matters out on direct, not redirect.

Mr. Bell: Yes, Your Honor.

The Court: Proceed, Mr. Britt.

Mr. Britt: May I have one moment?

The Court: Yes, you may.

Recross Examination

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(Tr. 55)

Mr. Britt: I think that is all.

Mr. Bell: No further questions. You may step down.

The Court: Just a moment. How did you happen to meet at the Kismet Bar?

The Witness: Just happened to be there at the same time.

The Court: You were not called or there was no prearranged meeting?

The Witness: No.

The Court. How long did you talk to Mr. Lewis at that time?

The Witness: Just a matter of minutes. I didn't care to discuss it.

The Court: Are you saying by that or do you mean by that that he attempted to pursue you to discuss it further, or did he not?

The Witness: That ended the conversation when I said that I wasn't going to lie for anyone.

The Court: Well, did he ever use a word like "lie" with you at that time? Did he say lie?

The Witness: No, I don't believe so.

(Tr. 56)

The Court: When you discovered that there was money in the package after you talked to Mr. Long—is that correct?

The Witness: Yes.

The Court: —did Mr. Long tell you how much money was in the package?

The Witness: No.

The Court: Did he in any way characterize the amount by saying it was a lot of money or some money, or just money?

The Witness: He said it was money, and I asked him, I said, "Bring it back," and he says, "I have spent it." And I says, "Do you have any left?" He says, "Yes." I said, "Then please come back in town with it."

The Court: How long have you known Long?

The Witness: Maybe fifteen years.

The Court: Did he come to your place frequently, to your home?

The Witness: Yes.

The Court: Gentlemen, approach the bench here a moment.

(Conference at the bench.)

The Court: Go ahead. Do you have any further questions, gentlemen?

(Tr. 57)

Mr. Bell: No, sir.

Further Recross Examination

By Mr. Britt:

Q. Miss See, on this occasion in April at this bar, isn't it a fact that the defendant accused you of covering for Jim Long or said, "I think you are covering for Jim Long? A. No.

Q. All right. Did Bob Lewis at any time ever tell you to tell Jim Long to bring this package back? A. No.

The Court: Your answer to that is no?

The Witness: Not to my face he didn't.

Q. To your knowledge did he ever tell anyone that he wanted Jim Long to bring this package back? A. I wouldn't know who he talked to.

Q. But, to your knowledge, he never told anyone that, did he? A. To my knowledge, no.

Q. And, isn't it a fact that to your knowledge he has always been unconcerned about the fact that it was taken? A. He seemed that way, yes.

Q. Now, Miss See, woh told you to tell Jim Long to bring back the rest of the money when he told you he had already spent part of it? (Tr. 58) A. At this time I had received the calls to tell him to come back in town.

Q. Those calls were not from Bob Lewis, were they? A. I do not know who they were from.

The Court: Let me ask a question.

Mr. Britt: All right.

The Court: You didn't know who the call was from —

The Witness: No.

The Court: — directing you as to where to take the money when Mr. Long came back in town, is that correct?

The Witness: I don' know who was calling, no.

The Court: If you didn't know who was calling you couldn't have known whether that person had any interest at all in those funds, could you?

The Witness: Well, they had to or why would they be calling me.

The Court: But you didn't know the person, did you? You didn't know who was calling?

The Witness: I did not know the voice.

The Court: Did you know where those funds came from.

The Witness: I did not.

(Tr. 59)

The Court: Did you have any idea that they may have been the product of a bank robbery?

The Witness: I did not.

The Court: Well, at the time you received them, as you say, from Mr. Lewis, the package at least, you say you did not know what was in the package at that time?

The Witness: When he gave it to me?

The Court: Yes.

The Witness: No, no.

The Court: And later on you were only told by Mr. Long?

The Witness: Yes.

The Court: After the package had been stolen, that he stole the package, is that correct?

The Witness: Yes.

The Court: And he told you that money was in the package, is that correct?

The Witness: Yes.

The Court: But he didn't tell you how much?

The Witness: I didn't ask.

The Court: Or what the denominations of the bills were?

The Witness: I never asked.

(Tr. 60)

The Court: You were not concerned?

The Witness: I was not.

The Court: You were not concerned, you mean?

The Witness: No. It was none of my business.

The Court: Even though the money was left in your charge, in your custody, the package, rather?

The Witness: I was very upset because the package had been trusted to me and it was stolen, but it was none of my business what was in it.

The Court: All right. Now, at that point who did you believe the package or the money belonged to? At that time when Mr. Long informed you that this package contained money, who did you believe it belonged to?

The Witness: Bob had brought it to me.

The Court: Pardon me.

The Witness: Bob had brought it to me.

The Court: Who is Bob?

The Witness: Lewis.

The Court: Now, what do you mean by that, "Bob brought it to me?" I am asking you a very direct question. Who did you believe the money or the package belonged to? (Tr. 61).

The Witness: Bob Lewis.

The Court: All right. Now, would you not then expect to be directed as to what course or where this money should be delivered by Mr. Bob Lewis? Would you not?

The Witness: I don't understand you.

The Court: You don't understand that question. Since the package was brought to you by Mr. Lewis and you later found out that there was money in the package from Mr. Long, why would you follow the instructions of an unknown voice over a telephone as to where to take the money, when you have just told me that you believed this belonged to Mr. Lewis?

The Witness: Because this is what was happening. They were calling me all hours of the night and the day and telling me that I had better get this package back.

The Court: To whom? Get it back? You mean from Mr. Long?

The Witness: Yes.

The Court: Did you tell Mr. Lewis that you were getting these calls?

The Witness: At the day when I told him that his package was coming back in town and that I had been told to send this to an attorney, and I (Tr. 62) said, "You know I am sick of these phone calls and I don't want any more to do with this," he said, "Well, then, send it, send it to the attorney."

The Court: Well, at that time did you and Mr. Lewis — any way — incidentally, when you talked to Mr. Lewis about calls that you had received and sending property to an attorney and sending the package to an attorney, did you talk about the contents of that package?

The Witness: No.

The Court: How did that conversation occur, personally, in person, or was it over a telephone?

The Witness: No, it was in person.

The Court: It was in person?

The Witness: Yes.

The Court: And, how did that come about?

The Witness: This particular — his mother had stopped by my home.

The Court: When?

The Witness: I don't know when. At this particular time after Jim Long had contacted me and said that he would come back.

The Court: Well, when was that, what time? Was it in January, was it in February, or (Tr. 63) when was it?

The Witness: Well, it was about a week after it was taken, so it would be probably the end of January.

The Court: Now, whose mother came by your home?

The Witness: Bob Lewis and his mother.

The Court: Bob Lewis and his mother?

The Witness: Yes.

The Court: You mean just happened to drop by?

The Witness: They were discussing their club, entertainment.

The Court: Do you mean they were discussing it with you, they came to discuss it with you?

The Witness: Because I knew a singer and they were discussing this type of thing, whether, you know, she would be good enough to work in the club.

The Court: And is that what they came to discuss with you?

The Witness: Yes, I believe so.

The Court: That was the reason for their coming, as far as you could determine?

The Witness: Yes.

The Court: How long did you talk about (Tr. 64) the matter of the singer for the club?

The Witness: Oh, I don't know. They were probably there an hour or so. I don't remember.

The Court: Now, was it after all that or during that conversation that you brought up the matter of the call from Long, that he was returning?

The Witness: I didn't discuss this in front of his mother. When they were ready to leave I told him.

The Court: How did you do that?

The Witness: I said, "Bob, I have talked to Jim Long and he is coming back in town with whatever he has and I was told on the phone to take this to Joe Hans," and he says, "Well, then, this is what you do."

The Court: Now, up until that time at least your testimony has been that you have never and Mr. Lewis had

never discussed with you the contents of that package, that is, that that package held any money, is that correct?

The Witness: No, he never told me this.

The Court: So, this was the first time, so far as you know, that you were talking about money that Mr. Long had taken and was coming back with?

The Witness: Yes.

(Tr. 65)

The Court: To Mr. Lewis, is that correct?

The Witness: Yes.

The Court: Now, where did you carry on this discussion with Mr. Lewis?

The Witness: I imagine in my kitchen.

The Court: Well, do you remember? Try to remember.

The Witness: I would say it was because we were usually every one comes in sits in the kitchen.

The Court: Where was his mother at that time?

The Witness: I believe she had went out to the car or was on her way out the door.

The Court: And, what did you do? Did you stop Mr. Lewis or did you ask him to remain behind or something of that sort?

The Witness: He was leaving, going out, I told him this.

The Court: Now, you volunteered this to Mr. Lewis, is that correct?

The Witness: Yes.

The Court: He did not inquire about it of you?

The Witness: No, no.

(Tr. 66)

The Court: Just exactly what did you say to Mr. Lewis then? This is another conversation that has not been brought out in testimony so far.

The Witness: Yes. Well, I was pretty angry because he had told me that it was one thing in the box and then when Jim Long calls me he tells me it is money, and I just told him that this was coming back and I had received these calls to send it to Joe Hans and he says, "Then you do that."

The Court: Well, were you angry when you first found out that there was money in the box?

The Witness: I was upset. I didn't know who to believe or what.

The Court: Did you accuse Mr. Lewis in any way at that time? At least he was in your presence.

The Witness: No, I had nothing to say to Mr. Lewis about what it was or why.

The Court: Did you ask how much money was in the package?

The Witness: No, I did not.

The Court: When Mr. Long said he was coming back is it your testimony that he simply said he was coming back with what he had left, or did he mention some figure to you?

The Witness: He gave me no figure.

(Tr. 67)

The Court: Incidentally, where did he call from, do you know?

The Witness: Supposed to have been I think Albuquerque.

The Court: Albuquerque, New Mexico?

The Witness: Yes.

The Court: And, how long had he been gone?

The Witness: I would say maybe a week.

The Court: Did you see Mr. Long when he came back?

The Witness: Yes.

The Court: Immediately after he came back?

The Witness: The same day.

The Court: And, did you talk to him about this matter at all?

The Witness: It was discussed, yes.

The Court: Will you tell me how that came about, and what happened?

The Witness: Well, he came to me to tell me that he was very sorry that he had stolen anything from my home, and this type of thing, that he was sorry he had done it.

The Court: He was sorry that he had stolen what from your home?

(Tr. 68)

The Witness: Anything.

The Court: Anything?

The Witness: Yes.

The Court: Did he know Mr. Lewis, as far as you know?

The Witness: I believe he knows him.

The Court: Well, as far as you know, have you ever been in company when the two of these gentlemen were together?

The Witness: Jim and I have stopped in their bar. I couldn't say whether Mr. Lewis was there or not these times, you know.

The Court: What else did Mr. Long say besides he was sorry for having stolen anything from your house?

The Witness: Well, when he opened this package and seen it was money, that it surprised him, and that's why he threw it out the window.

The Court: Yes.

The Witness: And took off, left town.

The Court: At that time did he tell you how much money he took, how much money was in the package?

The Witness: No, he never told me.

The Court: What did you say at that (Tr. 69) point to him when he said he was sorry that he took the money?

The Witness: I don't remember. I told him that we could never be friends like we were, that he wouldn't be welcome in my home any more.

The Court: What else did you say? Did you say anything about the money itself?

The Witness: I imagine it was mentioned but I couldn't tell you how or what was said.

The Court: Well, up until this time you never knew how much money was in the package, did you?

The Witness: No, sir.

The Court: Did you ask then how much money was in the package when he took it?

The Witness: I don't know that I did.

The Court: Did you ask how much money he had left when he came back?

The Witness: I think it was—I don't remember the exact figure but I think it was a thousand something. I don't really know.

The Court: Did that appear to be a lot of money to you at that time?

The Witness: Oh, yes.

The Court: A substantial figure? After you had that conversation with Mr. Long when he returned (Tr. 70) with this package, then what happened, what did Mr. Long do with this money or with the package?

The Witness: He left it at his home.

The Court: Before he talked to you?

The Witness: Yes.

The Court: So when he came back he went directly to his home?

The Witness: I understand that he did.

The Court: It was after your conversation with Mr. Long that you picked up the money, is that right?

The Witness: No.

The Court: It was before your conversation with Mr. Long?

The Witness: I picked it up before. Then he came to my house. I picked it up probably sometime in the afternoon or maybe early evening, and then I saw him later that night.

The Court: How did you know where to pick this up?

The Witness: His wife called me and told me to come and get it.

The Court: When he left for Albuquerque did Mr. Long mention whether his wife had been along with him, whether she went along with him?

(Tr. 71)

The Witness: I knew that she hadn't because I had talked to her.

The Court: You had been talking to her during his absence?

The Witness: Yes.

The Court: When he came back, then, his wife called and told you to pick it up?

The Witness: Yes. I understand that he went to Joe Hans' home and that he wasn't home.

The Court: Now what you understand, what you were directed or asked to do. When Mr. Long came in town, first, did he call you and tell you he was in town?

The Witness: Yes.

The Court: At that moment when he called you and said he was in town, did you ask him about the package, the money?

The Witness: I just told him what to do with it.

The Court: Told who, told Long what to do?

The Witness: Yes.

The Court: This was in view of an anonymous call you had received?

The Witness: Yes.

(Tr. 72)

The Court: And insofar as you knew at that time, this call was not from Mr. Lewis?

The Witness: I have never known who it was from?

The Court: But yet you knew you got the package from Mr. Lewis?

The Witness: Yes.

The Court: All right. Then what did Mr. Long tell you when you told him what to do with the money?

The Witness: That he naturally would take it out to this attorney.

The Court: But he did not, is that correct?

The Witness: He didn't.

The Court: You did?

The Witness: I didn't take it there, I had it sent there.

The Court: But you directed it there to the attorney?

The Witness: Yes.

The Court: And after Mr. Long called you and you told him what to do with the money, what did you do?

The Witness: I didn't do anything.

(Tr. 73)

The Court: Did you call anybody?

The Witness: No.

The Court: Did you call Mr. Lewis?

The Witness: No.

The Court: To inform him as to what it was happening to the money that he left with you?

The Witness: I had already told Mr. Lewis and he told me to send it to Joe Hans, and I saw no other reason for further conversation with him.

The Court: Did you ask Mr. Long to tell Mr. Lewis that this was going to be accomplished?

The Witness: No.

The Court: In view of all the questions which the Court has asked I will permit extensive redirect and cross examination of this witness covering any points that the Court has covered, but that will be accomplished tomorrow.

The Court will adjourn until nine-thirty tomorrow morning.

(Court thereupon adjourned at 4:15 p.m.)

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(Tr. 87)

Mr. Britt: That is all, Miss See.

The Court. Who do you live with? Do you live alone?

The Witness: Yes.

The Court: Do you live in an apartment or a home?

The Witness: It is a home.

The Court: Do you own it?

The Witness: No.

The Court: Who owns it, do you know? Who is the landlord?

The Witness: Mrs. Fisher, a friend of mine.

The Court: How much rent do you pay?

The Witness: $85 a month.

(Tr. 88)

The Court: How do you earn money to pay the rent?

The Witness: A friend of mine gives it to me.

The Court: Who?

The Witness: Pays it for me.

The Court: Who is he?

The Witness: Frank Drungold.

The Court: Spell it, please.

The Witness: D-r-u-n-g-o-l-d.

The Court: He gives you $85 a month?

The Witness: He pays it.

The Court: Pays the rent?

The Witness: Yes. I don't pay it.

The Court: What about your food and clothing?

The Witness: I get the money from him every week for what I need.

The Court: Where does he live?

The Witness: On Richmond Avenue.

The Court: Do you know the address?

The Witness: 1716.

The Court: And what is your food and clothing bill per month, do you know?

The Witness: I couldn't say.

(Tr. 89)

The Court: Could you estimate it?

The Witness: Oh, I imagine food could be fifteen or twenty a week and clothing—I couldn't say. I really don't know.

The Court: Do you have an automobile?

The Witness: No, I do not.

The Court: Do you drive an automobile?

The Witness: I drive one.

The Court: Whose automobile do you drive?

The Witness: It belongs to Mr. Drungold.

The Court: How long have you lived at your present address?

The Witness: I'd say sixteen, seventeen years.

The Court: Does Mr. Drungold, or whatever his name is, know Mr. Long?

The Witness: No.

The Court: Does he know Mr. Lewis?

The Witness: Not that I would know of.

The Court: Do you know whether he knows Mr. Bebout?

The Witness: I have no way of knowing.

The Court: Do you travel out of the state now and then?

The Witness: Very rarely.

(Tr. 90)

The Court: Vacations, things of that sort?

The Witness: Once in a while, yes.

The Court: Where do you obtain the funds to take your vacation?

The Witness: From Mr. Drungold.

The Court: Can you estimate what you might use by way of funds for your annual vacation? Do you take an annual vacation?

The Witness: No.

The Court: Well, the last vacation, when did you take your last vacation?

The Witness: In, I believe, February.

The Court: How long were you gone?

The Witness: Two weeks.

The Court: Where were you?

The Witness: In Florida.

The Court: Did you stay at a hotel in Florida?

The Witness: No.

The Court: Where did you stay?

The Witness: I stayed with friends of mine, their apartment.

The Court: Was Mr. Drungold there?

The Witness: No.

(Tr. 91)

The Court: Did you share part of the expenses?

The Witness: Of the apartment, no.

The Court: Did you buy your own food?

The Witness: Well, I can't say for every meal.

The Court: How much did you spend there, any idea?

The Witness: Well, I'd say gas and oil going down, coming back, and the time that I was there. I'd say a couple hundred.

The Court: A couple hundred dollars?

The Witness: Sir?

The Court: A couple hundred dollars, is that what you said?

The Witness: Roughly I would say this.

The Court: I have nothing further with this witness but I suggest that you have the proper people take a look at this situation.

Mr. Bell: Very well, Your Honor.

Mr. Britt: Your Honor, we would again request the right to recall this witness depending upon the testimony of other witnesses.

The Court: As I said, try the lawsuit and when you need a witness —

(Tr. 92)

Mr. Britt: I am only requesting that the witness be instructed not to leave.

The Court: Yes, I understand. Don't leave the state and try not to leave this locality. Further testimony of yours may be required here in this hearing. Step down.

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(Tr. 134)

Viola Long

Cross Examination

By Mr. Britt:

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(Tr. 145)

The Court: Anything further?

The first time you knew anything at all about a package, if my understanding of your testimony is correct, Charlotte See called you and told you that your husband had taken a package from her home, is that correct?

The Witness: That's correct.

The Court: Now, was that shortly — I would like you to keep your voice up, please.

The Witness: All right.

The Court: How long after your husband left Columbus, how much time, rather, had transpired after your husband had left Columbus until you received this call, first call, from Charlotte concerning the package?

The Witness: I don't know when my husband left Columbus.

The Court: When did you receive the call from Charlotte?

The Witness: On a Tuesday.

The Court: On a Tuesday?

The Witness: That's correct.

The Court: Now, how do you know it was a Tuesday?

The Witness: Well, I am just saying, (Tr. 146) it was around the first of the week. I would say Tuesday or Wednesday. I can't say definitely.

The Court: What date?

The Witness: Now, that I can't tell you, sir.

The Court: Well, approximately. Was it in the month of January?

The Witness: It was in the month of January.

The Court: In the month of January?

The Witness: Yes, sir.

The Court: Was it about the middle of the month or near the beginning of the month? Do you have any recollection?

The Witness: It wasn't the beginning, I don't believe, but this I can't remember, Your Honor. I know it was in the month of January, but the dates I can't give you.

The Court: Have you ever been examined on this matter before?

The Witness: Yes, I have been questioned about it before.

The Court: By whom?

The Witness: Well, I was up here before about this. (Tr. 147)

The Court: By whom were you questioned, by FBI Agents?

The Witness: Yes, sir.

The Court: Were you questioned by anyone else?

The Witness: No, sir.

The Court: Have you discussed it with anyone else?

The Witness: No, I haven't.

The Court: Have you ever discussed it with Mr. Long?

The Witness: Yes, after it all had happened and it all came out to this.

The Court: And before you came to trial?

The Witness: Yes, sir.

The Court: Have you discussed it with Charlotte See?

The Witness: No. I don't see Charlotte very often except for up here we have discussed it. This is all I have discussed with Charlotte about this.

Mr. Britt: I am sorry, I can't hear.

The Court: She said in substance that she doesn't see Charlotte very often and she has seen her here a few times. Is that correct?

(Tr. 148)

The Witness: That's correct.

The Court: Before you saw her here at the court house—

The Witness: Uh huh.

The Court: — had you in any way discussed this matter with Charlotte?

The Witness: No, I haven't.

The Court: You have not?

The Witness: No, I haven't.

The Court: But, you have discussed it with Long, with Mr. Long?

The Witness: Oh, yes.

The Court: All right. Well, you received the call from Charlotte in January?

The Witness: Yes.

The Court: Of 1963?

The Witness: That's correct.

The Court: And, she told you that your husband had taken a package from her home, is that correct?

The Witness: That's correct.

The Court: And, did she at the same time tell you that he left this community?

The Witness: No. She didn't know that.

The Court: She didn't know that he had (Tr. 149) gone?

The Witness: She never mentioned it to me.

The Court: Now, will you tell me, wasn't it at that time that she restrained or refrained somehow from discussing it over the phone?

The Witness: I asked her if there was anything wrong.

The Court: Yes. And, did you say something about not discussing it over the phone?

The Witness: Yes.

The Court: Now, who said that, Charlotte?

The Witness: Yes. She said "if you would like to come out to my home, that I would tell you."

The Court: "I will tell you?"

The Witness: Yes.

The Court: Tell what?

The Witness: Then she told me that he had taken a package that a friend had left at her home.

The Court: Just a moment. But when she called you the first call was to inform you that your husband had taken a package?

The Witness: That's correct.

The Court: And, had not returned it?

(Tr. 150)

The Witness: That's correct.

The Court: Now, did she ask you where he was?

The Witness: She asked me if I had heard from him, and I told her, no, I hadn't heard from Jim in a few days.

The Court: In a few days?

The Witness: Uh huh.

The Court: And she then told you, so that I can get started on this line of examination, that he had taken a package, is that correct?

The Witness: That's correct.

The Court: Now, how did this matter of not discussing it over the phone arise? Will you tell me what you said, what Charlotte said to you, and what you said to her?

The Witness: Well, that she said — I asked her if there was anything wrong and she said, yes, that a package had been taken from her home that had been left at her home by someone.

The Court: Package taken by whom? A package taken from her home by whom?

The Witness: That Jim had taken a package from her home.

The Court: All right.

The Witness: That a friend had left with (Tr. 151) her that said they had internal revenue papers in it. She didn't tell me this over the phone, you understand. She told me this at her home.

The Court: Before we get into what was in the package, she told you, then, that Jim had taken a package from her home?

The Witness: Uh huh.

The Court: Was it then that you asked whether anything was wrong?

The Witness: Yes.

The Court: Or was it when she first called and asked whether you had seen Jim or whether you knew where he was?

The Witness: No, I asked her after, that she said that Jim had taken a package from her home.

The Court: And it was after that that you asked whether there was anything wrong?

The Witness: No, it was before that that I asked her if there was anything wrong, and she said that Jim had taken a package from her home.

The Court: All right. Now, then, at that point did you ask what that was all about?

The Witness: I did. I said "what is it all about?" She said that she didn't want to discuss it over the phone.

(Tr. 152)

The Court: Over the phone, that you should go out there?

The Witness: Well, I asked her if I may come out there.

The Court: I see. So then you did go out to her home?

The Witness: Yes, sir.

The Court: And, will you tell me what happened? How did you get to her home? Did you drive out?

The Witness: No, I took a taxi.

The Court: Took a taxi?

The Witness: Uh huh.

The Court: When you got to her home was she waiting for you, or what? Did you tell her you were coming out, incidentally?

The Witness: Oh, yes.

The Court: Now, just tell me what happened when you got to her home?

The Witness: I just sat down and asked her what it was all about, and that's when she told me that a friend had left it there saying that there was internal revenue papers in there.

The Court: You didn't just say what was it all about. Did you have some discussion?

(Tr. 153)

The Witness: I asked her what was wrong. We had no discussion. I just asked her what was wrong and about the package because she had mentioned a package. I said, what was it, and then she begin to tell me that this man had left it there.

The Court: You asked her what this package thing was all about?

The Witness: Why, I asked her.

The Court: All right. Then what did she say exactly? Don't tell me the effect of what she said but what she actually said to you?

The Witness: That a man had left a package there containing — that was told to her that was containing internal revenue papers.

The Court: Did she mention the man who left the package?

The Witness: She did not.

The Court: She did not disclose his name to you?

The Witness: No, she didn't and I didn't ask her.

The Court: Now, did she tell you when the package was left there?

The Witness: No, she didn't.

The Court: Now, she then told you that (Tr. 154) there was something in the package?

The Witness: Yes.

The Court: What did she tell you was in the package?

The Witness: She learned that there was money in the package.

The Court: She had learned at this point that there was money in the package?

The Witness: That's correct.

The Court: From whom?

The Witness: She didn't say and I didn't ask her.

The Court: Did she learn how much was in the package?

The Witness: She didn't say.

The Court: Well, did she say anything as to whether generally large or small sum of money?

The Witness: No, she didn't say.

The Court: Now, did she say, "Well, your husband stole this package from me"?

The Witness: No, she didn't put it in those words. She just said he did take it from the home.

The Court: All right. Now, can you recall what she said concerning the package, her words? I realize it may not be exact but as nearly (Tr. 155) as you can. In other words, when you walked in the room and sat down and said, "What's this all about," she then said something to you?

The Witness: Well, I told you before what she told me, that the man had left it there and what he said was in it. Then she had learned that there was money in there.

The Court: Just tell me as though you were Charlotte See, now, what she said, her words, as far as you can remember. I don't expect it to be exact.

The Witness: Well, that a friend, a man — I don't know the expression she did use — that asked her to leave a package in her home.

The Court: See if you can put it for me in the first person.

The Witness: That a friend had left a package with her.

The Court: "With me."

The Witness: "With me, asked me if he could leave it here for a while, that there was internal revenue papers in it."

The Court: She told you that he said there were internal revenue papers in it?

The Witness: Yes.

(Tr. 156)

The Court. What did you gather that that meant, internal revenue papers?

The Witness: This I don't know. Internal revenue papers are tax, where you fill out your tax, your income tax.

This is all — I didn't really — didn't think what they were. Internal revenue I just think of income tax papers.

The Court: Just papers is all?

The Witness: Yes.

The Court: What else, then, was said by Charlotte See to you?

The Witness: That the night — that he was there one night and took the package from her home. And I don't recall the night that they were there, but they were there at her home and that he had left with the package.

The Court: All right. Now at this point she has told you that someone had left a package in her home and told her there were internal revenue papers in it?

The Witness: Yes.

The Court: And that your husband, Mr. Long, had been there and when he left he took the package with him?

The Witness: That's correct.

(Tr. 157)

The Court: Now, then, she said something more about the package. What else did she say?

The Witness: That she had learned that there was money in the package.

The Court: Now, tell me what she said there?

The Witness: She said just, "Well, there wasn't internal revenue papers in it, there was money in there."

The Court: All right. There wasn't internal revenue papers in it, there was money in there?

The Witness: That's correct.

The Court: Is that, you think, what her language was?

The Witness: Well, I am saying it —

The Court: I realize it cannot be exact. I only want to get these events straightened out.

The Witness: Yes.

The Court: Is that what she said, then?

The Witness: That's correct.

The Court: Did she mention at all when she learned there was money in there or when or how she learned it?

The Witness: No.

The Court: Now, what else did she say (Tr. 158) at that time? Now, you have taken a cab out to her home, you have sat down to find out what this is about, a subject which would not be discussed over the phone.

The Witness: Of course, I mentioned I couldn't understand Jim taking the package from her home.

The Court: This surprised you?

The Witness: Well, yes. I mean, to think that he would take it from her home without her permission, yes, it did.

The Court: And, did you talk about that?

The Witness: Not very much. I just mentioned that I didn't think that Jim would do that.

The Court: What did she say in response to that?

The Witness: She said, "Well, he did, though."

The Court: Did you ask her, "How do you know this, that he took it?"

The Witness: No, I didn't.

The Court: Did you believe her at that time, that he took it?

The Witness: Well, yes.

The Court: On her word?

The Witness: I did.

(Tr. 159)

The Court: All right. The Court will recess for ten minutes.

(Recess.)

The Court: Where do you live?

The Witness: 497 Frebis.

The Court: Is that in Columbus?
The Witness: Yes, sir.
The Court: How long have you lived there?
The Witness: I lived at 489 at the time and I moved in June to 497.
The Court: When were you and Mr. Long married?
The Witness: March 2, 1946.
The Court: Do you have children?
The Witness: I do.
The Court: How many?
The Witness: I have one boy, sixteen.
The Court: How long have you know Charlotte See?
The Witness: I would say maybe eight years.
The Court: Eight years?
The Witness: I would say around that, yes.
The Court: How did you meet her?
The Witness: Through my husband?
The Court: At your home or at her home?
(Tr. 160)
The Witness: At her home.
The Court: At her home?
The Witness: Yes, sir.
The Court: You knew they were friends?
The Witness: Yes.
The Court: Before you were married?
The Witness: No, I didn't know that.
The Court: Were you born in Columbus?
The Witness: Yes, sir.
The Court: Do your parents live here?
The Witness: Yes, my mother. My father is deceased.
The Court: Are you employed?
The Witness: Yes, I am.

The Court: Where?

The Witness: Columbus Dispatch.

The Court: Columbus Dispatch?

The Witness: Yes, sir.

The Court: What is your occupation there?

The Witness: I am in the Classified Department.

Mr. Britt: I am sorry?

The Court: Classified Department. I have nothing further.

Mr. Bell: Nothing further, Your Honor.

* * * * * * * * * * *

(Tr. 173)

Ronald D. Santavicca

Cross Examination

Q. Were you given any instructions with respect to hiding the car so that he couldn't see the license number or anything like that? A. No, I wasn't. She said she didn't want him to see her car because he knew it. I parked right in front of the house, left the motor running, lights on.

Q. And then when you went to Mr. Hans' who answered the door? A. Mr. Hans, the attorney.

Q. What time was this? A. About half an hour later.

Q. That would be what, nine-thirty, ten o'clock? (Tr. 174) A. About ten-fifteen, I would say.

Q. Ten-fifteen P.M.? A. P.M.

Q. And when he answered the door what did you say, if anything? A. I asked him —

The Court: Never mind, we have been over that two or three times.

* * * * * * * * * * *

(Tr. 175)

The Court: The Court will adjourn until 2 P. M.

Mr. Bell: If the Court please, are you finished with this witness?

The Court: Yes.

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(Tr. 176)

Joseph Hans,

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bell:

Q. State your name and address, please? A. Joseph Hans, 3791 Deshler.

Q. What is your occupation, Mr. Hans? A. Attorney at law.

Q. Are you admitted to practice in the State of Ohio? A. Yes, I am.

Q. How long have you been practicing law, sir? A. Approximately three years.

Q. Mr. Hans, do you remember the events that took place in January of 1963 concerning a package that was delivered to your home? A. Yes.

Q. Will you tell the Court and jury what took place, please? A. Well, approximately 10 P.M. on a Sunday evening, I believe it was the 27th or 28th of January, my wife and I were sitting in the front room watching television. The (Tr. 177) telehone rang and a voice said to me, "Mr. Hans —

Mr. Britt: We will object to this unless it can be —

The Court: Sustained. A telephone rang. Then what did you do? Tell us what you did.

A. I had a conversation on the telephone. The next event that happened was there was a knock on the door at approximately 10:30 in the evening. It was a very cold night, the door was rather froze up. I answered the door and an individual handed me a package which I took in the inside, and it was an envelope in masking tape, bound lengthwise and end wise. I took it into the kitchen. I took a pair of scissors or a knife, I forget, either one, and opened the package and it contained money.

Q. Can you tell us about how much money it contained? A. I believe it was exactly $1154.

Q. You counted it? A. Yes.

Q. What denominations? A. Five dollar bills and one dollar bills.

Q. What did you do with this money after that? A. I put the money back in the envelope, I put it in my overcoat pocket. The next day when I went to my office I took it with me.

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Q. What did you do with it in your office? (Tr. 178) A. Well, it was rather — appeared to me a strange circumstance getting the money like that. So I immediately the next day contacted one of our municipal judges in town and told him the circumstances of receiving this money. He told me to put it in a safe or a safety deposit box. I put it in a safety deposit box and — I put it in a safe and I left it there.

Q. Where was this safe located? A. This safe was located at the Robert E. Lee Motel.

Q. Where is that located? A. That is on East Main Street, 3750 I believe.

Q. Do you know who owns that motel, at that time? A. Yes, a client of mine by the name of Glenn Cook.

Q. Now, did you see where Mr. Cook put this money? A. No, I didn't.

Q. In January of 1963 did you have occasion to know one Thelma Lewis? A. I don't believe it was in January.

Q. Do you know such a person? A. Yes, I do.

Q. Did you ever represent them? A. Yes, I have.

Q. And, do you know one Robert H. Lewis, Jr.? A. Yes, I do.

Q. Do you know his relationship — what relation is he to Thelma Lewis? (Tr. 179) A. He is Mrs. Lewis' son.

Q. How long did you represent Mrs. Lewis?

Mr. Britt: Your Honor, I object to this. I think that there may be some — I am not certain of the privileged communication aspect concerned here.

Mr. Bell: If the Court please, I haven't —

The Court: He hasn't established any.

Mr. Bell: I haven't attempted to —

Mr. Britt: Only between he and Mrs. Lewis.

Mr. Bell: I haven't asked for any relation.

The Court: Overruled at this time. Go ahead.

A. I represented Mrs. Lewis for a period of approximately four months.

Q. Is that prior to January 1962? A. No, this was after January.

Q. After January? A. Yes.

Q. Did you represent her prior to January '63? A. No.

Q. Did you know one Robert Hall Lewis, Jr. prior to January 1963? A. No.

Q. Now, sir, how long did this money that you put in the (Tr. 180) Robert E. Lee Motel remain there? A. I would say in the vicinity of four to six weeks.

Q. And, did you remove it? A. Yes.

Q. Why did you take the money away from the Robert E. Lee Motel? A. Well, on a Saturday afternoon I came home from the office and there was, which I found out later to be, two FBI Agents at my office, and they identified theirselves. It was Dan Johnson and I believe Bob Maley. Asked me if I received a package that had money in it, which I told them yes. They asked me what I had done with the package. I told them that I would get the money for them. I wouldn't tell them at that particular time where I had it. They said, "Fine, go get it and bring it back," which I did. They waited at my office while I went and retrieved the package and brought it back to them.

Q. Where did you retrieve the package from? A. From the Robert E. Lee.

Q. Do you know who gave it to you at the Robert E. Lee? A. Mr. Cook.

Q. Now, how long did it take you to drive from your home to the Robert E. Lee Motel? A. It was a half hour.

Q. How long did it take you to drive back? (Tr. 181) A. A half hour altogether, when I left my house and returned.

Q. The round trip? A. Right.

Q. In that interim did you again look at this money? A. No.

Q. Did you take the money home? A. I took it to my house where the FBI was waiting.

Q. Then what happened? A. I turned the money over to Mr. Johnson.

Q. And, did you then remain at home that afternoon? A. No, I went with them down to the FBI headquarters here in this building.

Q. And, what took place at that time? A. Well, at that particular time they asked me questions concerning my

obtaining the money, how it came into my possession, what I had done with the money. And, they gave me a receipt for the money and I left the money in their possession.

Q. Now, can you tell us approximately how many ones, how many fives were in this money when you received it on that Sunday evening from this young man? A. There were approximately 190 some fives and 211 ones, somewhere in that neighborhood.

Q. Did you see this money in the FBI office when you turned it over to the FBI Agents? (Tr. 182) A. Yes.

Q. Can you tell us at that time how many ones and how many fives? A. There were the same amount.

Mr. Bell: You may cross examine.

Cross Examination

By Mr. Britt:

Q. Mr. Hans, do you know a woman of the name of Eva Groves? A. No, I don't.

Q. Do you know where Moler Road is? A. Moler Road?

Q. Yes sir. A. I would be guessing. I don't know offhand.

Q. You have no idea how far it would be from your residence on Deshler to Moler Road? A. I don't know where Moler Road is. I would say it would be in the south end. I would say it would probably be a period of eight miles.

Q. All right. In the city of Columbus are you familiar with taxicab fares? A. Yes.

Q. Can you tell us what would, in your best judgment, the taxicab fare would be from your residence to Moler Road? A. I would say about $2.60.

(Tr. 183)

Q. And you stated that on this Sunday evening of January 27 or 28 you received a telephone call at your home? A. Yes.

Q. Not what was said in that call, but was it a man or a woman that called? A. It appeared to be a woman's voice.

Q. A woman's voice. And, approximately how long was it from the time of the call until someone came to your door? A. One half hour.

Q. Prior to this date of January 27 or 28 did you know the defendant Robert Lewis? A. No.

Q. Did you know his mother? A. No.

Q. It was after that, then, that you represented his mother? A. That's correct.

Q. Was that in any respect with reference to this case and Robert Lewis? In other words, were you representing him? A. Mr. Lewis?

Q. Yes? A. No.

Q. Have you ever represented him? A. No, I have not.

Q. Have you ever represented Mr. Bebout? (Tr. 184) A. No.

Q. Do you know Mr. Bebout? A. I have talked to him in city prison on two occasions.

Q. And, at whose request did you talk to Mr. Bebout? A. Your Honor, I would like at this time claim any privilege I may have.

The Court: Approach the bench. Do you know what is coming?

Mr. Bell: No.

The Court: Marshal, take the jury to the jury room. We want to discuss a question of law. It is not an attempt to keep facts from you that you should hear, but it is a matter that doesn't concern you.

(Jury retires to the jury room.)

Mr. Bell: I had researched this on another problem I thought might arise, but in the case of Prichard vs. United States, 181 F. 2nd, 326, Sixth Circuit —

The Court: Before we go any further I would like to find out what this is all about. What privilege are you claiming, attorney and client?

The Witness: Yes, Your Honor.

The Court: With respect to your going to Mr. Bebout? (Tr. 185)

The Witness: With respect to the client who I was representing at the time I went to Mr. Bebout.

The Court: Are you claiming that Mr. Bebout was your client?

The Witness: No. I am claiming that the person who sent me to see him was my client.

The Court: On a matter of legal business?

The Witness: Yes, Your Honor.

The Court: Go ahead.

Mr. Bell: Well, this is the Sixth Circuit, 1950 case. It was affirmed in 339 US page 974. I have not read the United States reports on it and I cite this for the reference to the Court because I didn't know this question was coming up and I have not read it in the light of this question. It cites several criteria set out by Wigmore on Evidence. Now if the Court would care to look at it, that's why I am citing it.

The Court: You are simply giving me the cite and not telling me what it holds?

Mr. Bell: It holds that in light of this question — I would have to read it because this wasn't anticipated.

The Court: The Court will recess for ten minutes. Come into chambers and bring me what you (Tr. 186) have.

(Recess.)

(Jury returns to jury box.)

The Court: First, for the benefit of the record, the Court is of the opinion in connection with the attorney-client re-

lationship the first thing that must be shown is that a relationship did in fact exist.

Answer the question.

The Witness: May I have the question re-read, Your Honor.

Mr. Bell: Read the question.

(The question was read, as follows: "And, at whose request did you talk to Mr. Bebout?")

A. At Mrs. Lewis' request.

The Court: It is the way in which the question was asked. The jury will disregard the question and the answer. You claim a privilege, correct?

The Witness: Yes, sir.

The Court: On an attorney-client relationship, is that correct?

The Witness: Yes, Your Honor.

The Court: Who was the client?

The Witness: The client was Mrs. Lewis.

(Tr. 187)

The Court: All right.

Mr. Britt: May I have exceptions, Your Honor?

The Court: Yes.

By Mr. Britt:

Q. Mr. Hans, when did you go to see Mr. Bebout? A. I would say possibly somewhere between the 8th and 15th of February.

Q. And, approximately how long after you were instructed by your client to see him did you see him? A. Your Honor, again, I will claim the privilege.

The Court: Sustained. He need not divulge the communications that occurred between him and his client, and I have already asked the jury to disregard that, but that's only because of the manner in which you put the initial

question. It was your question and your line of question, really, to which you now took exception. Now, once he has shown the attorney-client relationship I agree that the communications that occurred between him and his client are privileged.

Mr. Britt: I am not asking for the communication, I am only asking for the time involved between —

The Court: But, you include in your (Tr. 188) question statements that emanated from so-called statements from a client, and you don't know that.

Mr. Bell: If the Court please, may we approach the bench?

The Court: Yes.

(Conference at the bench.)

The Court: Take the jury from the court room again.

Just a moment, before you leave the court room. Ladies and gentlemen, disregard, obliterate from your mind, if you can — I am sure that you can — all testimony you have heard relating to the attorney-client, so-called attorney-client relationship. You may go back to the jury room.

(Jury retires to the jury room.)

The Court: All right. Let me examine on this. Mr. Hans, you claim a privilege of attorney-client relationship between you and Mrs. Lewis, is that correct?

The Witness: Yes, Your Honor.

The Court: All right. Did Mrs. Lewis come to you for any legal advice?

The Witness: Yes, Your Honor.

The Court: When, what day?

The Witness: The dates, Your Honor, I (Tr. 189) couldn't pinpoint, but I would say in the first week in January, or first week in February.

The Court: Legal advice relating to some purpose concerning Mrs. Lewis personally?

The Witness: Concerning an interest of Mrs. Lewis's.

The Court: In another person?

The Witness: Yes, Your Honor.

The Court: But not concerning Mrs. Lewis personally, her own personal affairs?

The Witness: Concerning her property.

The Court: Her property?

The Witness: Yes.

The Court: And, was anyone else present besides Mrs. Lewis?

The Witness: No, Your Honor.

The Court: At the time you spoke to her?

The Witness: No, Your Honor.

The Court: And are you saying that the communications that you claim are privileged related, or that there was a communication relating to her property?

The Witness: Yes, Your Honor.

The Court: A property interest which you were about to represent her on?

(Tr. 190)

The Witness: Yes, Your Honor.

The Court: You were representing her on?

The Witness: Yes, Your Honor.

The Court: Well, gentlemen, if he claims that she came to him for legal advice, and he is an attorney, concerning property, and that the communications he does not wish to divulge relate to that purpose, a property interest of hers, and that the communications are made by the client, it would seem to me that all the elements of the privilege are present.

Mr. Bell: If the Court please, may I inquire of the witness?

The Court: Yes.

Mr. Bell: Was this real property?

The Witness: Yes.

The Court: Did it have to do with the purchase or sale of real property?

The Witness: No.

The Court: Refinancing?

The Witness: No.

The Court: Did it have to do with a surety company?

The Witness: Your Honor, again we are getting into the area of privilege. Do you want me (Tr. 191) to divulge that now?

Mr. Bell: If the Court please, I would say that the purpose of my question is to ascertain just what his employment was and the scope of it.

The Court: Yes.

The Witness: Yes, it did.

Mr. Bell: What type of a surety company?

The Witness: It had to do with the property, the real property which she owns, as security for a bonding company.

The Court: That is sufficient to clear the issue a little, the object or purpose of the attorney-client relationship.

All right, now, where are we in this thing?

Mr. Bell: If I may address the Court, it would be my view that any questions going into the purpose of Mrs. Lewis and Mr. Hans, the attorney-client relationship, and the purpose of her employing Mr. Hans, is privileged.

The Court: Communications?

Mr. Bell: Yes.

The Court: What she says, yes.

Mr. Bell: Now, what he did in the way of a surety company, from there on, would have to be done in the presence of a third party.

The Court: Yes. Things that he did and (Tr. 192) acts that he undertook are not privileged.

Mr. Bell: Therefore, it would be my view that we cannot make inquiry as to what transpired between Mrs. Lewis and Mr. Hans concerning what he was to do in his advice to her, on this communication, with her property and the surety company, the bonding company.

The Court: Cannot go into the communications between him and her, but you can explore and examine on his acts, his conduct, what he did?

Mr. Bell: Yes, sir. And I think that that would also including going to see Mr. Bebout.

The Court: Oh, yes, I will go along with that.

Mr. Britt: Your Honor, I wonder if we are not doing indirectly what we can't do directly. In other words, once the attorney is compelled to disclose who his client is at a certain time, and immediately thereafter he goes to do certain things, anyone knows that he is doing it as the result of the counseling nad the privileged communications between he and his client.

The Court: Maybe, maybe not. It depends on what it is, it depends on what it is we are talking about. This is a privilege which extends to communications between attorney and client and that's all it (Tr. 193) extends to, communications. If one hires a lawyer, employs a lawyer, he may claim a privilege in connection with all things that he said to that lawyer, all communications he made to that lawyer, but he can't claim as privileged the fact that the lawyer walked over to the City Hall or the Common Pleas

Court and filed a lawsuit. He can't claim as privileged the lawyer's drive home that night. He can't claim as privileged anything that the lawyer ultimately did, but he can claim as privileged anything that she said to that lawyer. I have no recollection of the privilege extending beyond that. If you can show me something that indicates that it extends beyond communications between a lawyer and client, I am perfectly willing to back up —

Mr. Bell: If the Court please, for reference, and this is not a Federal case, an Ohio State case, and I can't recall the exact citation of it, where it explores I think the very issue the Court is speaking of now. If that would be any aid to the Court I can find it very quickly.

Mr. Britt: I think by analogy, Your Honor, where our problem is a situation of an automobile accident with someone perhaps seriously injured, and one witness and a missing party who goes to an attorney (Tr. 194) for counsel. It may very well be that the attorney goes out and talks to the injured party and to the witness.

The Court: Look, what is the purpose of the privilege?

Mr. Britt: It is to protect an individual in any dealings that they have with an attorney, so that the individual can go to that attorney and know that this attorney will not disclose what I have said to him.

The Court: Right.

Mr. Britt: Or, I think, even who I am, because, Your Honor —

The Court: So that he will not disclose, so that the policy which has been established is one which will enable the client to be able to make full, complete disclosures to his attorney so that his attorney can adequately represent him.

Mr. Britt: Correct, Your Honor.

The Court: All right.

Mr. Britt: And all the attorney can —

The Court: Now, remember, its purpose is not necessarily to hamstring the law.

Mr. Britt: Not necessarily.

The Court: To protect against that sort (Tr. 195) of thing, but to enable one to make full disclosures so as to be able to obtain adequate representation, the best representation he can, and we want to encourage that. But, that's what it protects, disclosures, communications; priest and penitent, same thing.

Mr. Britt: Correct.

The Witness: Your Honor —

The Court: What is protected are the communications and disclosures.

The Witness: Your Honor, may I say, inasmuch as I am claiming the privilege, that wouldn't it also extend to any acts which the client nistructed the attorney to do? In other words, because the attorney does the acts, does an act which he is requested by the client to do, that he should be privileged in refraining from divulging the act which he did at the request of the client.

The Court: In view of the fact that you are an attorney I will go ahead and answer that. I would say that it does not — you are not privileged to refuse to testify concerning the acts, only that you were instructed to carry out those acts. The fact that you did certain things are not privileged, but if your client instructed you to do certain things, (Tr. 196) then the instruction is privileged, that communication, but what you did is not. In other words, surely we distinguish here betwen communications and acts. Otherwise you could never establish — if I were to accept what has been urged here all the way around, first, you could never establish to the satisfaction of any court

whether an attorney-client relationship, priest-penitent relationship, doctor-patient relationship ever existed. So it seems to me, first, there has to be a disclosure, there has to be a statement, an identification of client, a statement, at least, that you represent the client, and that all statements made by the client and you were pursuant to the purpose of that relationship, the purpose for which you were employed, because everything that is said between a lawyer and another person is not privileged and the statements must bear on the relationship. But we have to distinguish between communications and acts, certainly.

Well, this seems to be very sound ground to me. I could be wrong, I don't think so. I have been wrong before.

Is there anything further on this?

Mr. Bell: I have nothing.

The Court: Now, restrain yourselves (Tr. 197) from getting into communications. Where he went and what he did, if it is relevant to the issues of this case, it seems to me are not privileged at all.

Mr. Britt: The only other aspect in that regard, if perhaps we can clear it up, is whether or not he was compensated for his work and by whom, because that is the first criterion, Your Honor, of an attorney-client relationship.

The Court: Not necessarily. It follows to be compensated. As a lawyer I wasn't always paid for everything I did. I think we are all that way.

Mr. Britt: And I think perhaps we could go into whether or not there was any of his comepnsation promised or whether there was any relationship between this package and the doing of this.

The Court: I don't know. Gentlemen, I will have to meet your questions as they arise. I just cannot explore this

whole thing. I don't know where it is going. Many of the things that we are anticipating now may never occur.

Is there anything further?

Mr. Bell: Not on this question.

The Court: If you have authority to the contrary to the thoughts that I have expressed in this connection with this privilege, and I suppose (Tr. 198) you gentlemen are in the same position that I am in, I haven't looked at the matter concerning privilege for a long time — as I say, if you have anything further in connection with this problem, bring it to my attention, I will be very happy to look at it.

All right, call the jury back in.

Mr. Bell: I know that as of the court procedure yesterday that shortly between three and three-thirty, I think, we did have a short recess.

The Court: Yes.

Mr. Bell: I wonder if now since the jury is out, perhaps the Court would grant the lawyers a five-minute recess and we can go right on through. Do you think that would be all right?

The Court: Recess for ten minutes.

(Recess.)

(Jury returns to jury box.)

The Court: Now, before you go further, again, ladies and gentlemen, anything which might have been said which would in any way disclose any statement made by the client to this attorney are what in law are called privileged communications. They are not admissible and the attorney need not testify to them and he should not, cannot, testify to them. And, if any such communications have been (Tr. 199) made known in this testimony, because it was broken up a couple of times by conferences, you simply

obliterate them from your minds, and under no circumstances give them any weight or any consideration whatever in your deliberations. They are not evidence, not admissible into evidence and cannot be considered.

Now, up until this point we have ascertained or it has been established that there was an attorney-client relationship between Mr. Hans and Mrs. Lewis.

Mr. Britt: Correct.

Mr. Bell: May I reapproach the bench?

(Conference at bench.)

The Court: The record also shows at this point that he went, Mr. Hans went to visit Mr. Bebout at the City Prison, I believe you said.

The Witness: Yes, Your Honor.

The Court: Yes, and that is all that the admissible record should show at this point, and that is all that the jury may consider at this point. All right.

By Mr. Britt:

Q. Mr. Hans, do you know who referred Mrs. Lewis to you? A. Again, I would be saying what my client told me.

The Court: Sustained. You need not answer.

(Tr. 200)

Q. Did you learn from any source other than your client as to who referred Mrs. Lewis to you? A. I don't — I don't recall. Actually, I don't recall whether I do or not, Your Honor.

Q. Have you ever represented Bob Lewis? A. No.

Q. You have —

The Court: Come up here, gentlemen.

(Conference at bench.)

By Mr. Britt:

Q. You have discussed with Bob Lewis matters relative to things you have represented his mother about, isn't that correct? A. Yes.

Q. And isn't it correct that you have also discussed with Bob Lewis with reference to who referred his mother to you? A. I may have.

Q. All right. Mr. Hans, in that regard. I will ask you this question: Isn't it a fact that Mrs. Thelma Lewis was referred to you by Charlotte See? A. Well, Charlotte See has never said anything to me. I have never discussed this matter with her at all. However, Mrs. Lewis did say that someone sent her in. I didn't — at the time I didn't bother to pay any attention to it.

Mr. Bell: Now, if the Court please, are we going to open the door here to all of this at this (Tr. 201) time?

The Court: Well, what has happened is Mr. Britt has brought out that much of what he discussed with Mrs. Lewis has been discussed with Mr. Lewis which would waive the privilege.

Mr. Bell: I think so.

The Court: Provided we determine what he discussed with Mr. Lewis, and I don't know what those things are yet.

Mr. Bell: I don't either.

The Court: But the witness will have to claim the privilege, and in instances where you have claimed it and I think it is applicable, I would sustain it.

Did you discuss generally prety much everything that Mrs. Lewis communicated to you with Mr. Lewis, her son? Did you discuss pretty much all of it?

The Witness: Yes, Your Honor.

The Court: Do you feel that there was anything that you and Mrs. Lewis went into that you have not gone over with Mr. Lewis?

The Witness: Yes. There have been some things.

The Court: All right. Those matters, (Tr. 202) the privilege will still apply to them. All other matters which — I mean relative to this employment. Now, I don't know whether you represented Mrs. Lewis in any other matters, but relative to this matter for which she came to you on the day you originally asserted the privilege here in this Court, if you have communicated, if you have discussed those details, those things which Mrs. Lewis talked to you about, to Mr. Lewis, her son, then, of course, the privilege is waived and you are free to talk about them. You are free to testify, and you must testify.

The Witness: Yes, Your Honor.

The Court: So let me ask again, after Mrs. Lewis retained you as an attorney, did you get in touch with Mr. Lewis or did he get in touch with you?

The Witness: I think that he got in touch with me some time later.

The Court: At your office?

The Witness: Yes, Your Honor.

The Court: At that time did you tell him his mother had retained you?

The Witness: Yes.

The Court: Did you tell him the purpose of the retention?

The Witness: I didn't go into full detail. (Tr. 203) I told him basically what she was requesting from me.

The Court: Is it your recollection that you covered in your conversation with him pretty much all that Mrs. Lewis had communicated to you?

The Witness: No, Your Honor.

The Court: In your retention?

The Witness: There were certain things that mother did not want her son to know that she came to see me about, and I have never discussed that with him.

The Court: All right. To those matters the privilege exists and, of course, you must claim it. On other matters you must testify about.

Proceed.

By Mr. Britt:

Q. All right, Mr. Hans, were you paid for your representation of Mrs. Lewis? A. Yes.

Q. Did the money, the $1154.00, which you received, in any way was it a portion of your fee? A. No. I received this money before I ever even knew Mr. Lewis or Mrs. Lewis.

Q. All right. You have testified that in, I believe, late January the F.B.I. came to you concerning this package of money. (Tr. 204) A. No, this was when I received the package of money, in late January.

Q. All right. When was it the F.B.I. came to you concerning it? A. I would say it would be the latter part of February, the very last days of February or the first week or so in March.

Q. All right. Prior to that time had you considered that money in any way connected with your employment by Mrs. Lewis? A. No.

Q. Had you associated that money in any way with your representation of Mrs. Lewis? A. No.

Q. Had you at any time discussed with Bob Lewis the fact that you had received this money? A. No.

Q. Did you associate that money in any way with Bob Lewis or Mrs. Lewis? A. No.

Q. And I will ask you again, isn't it correct that Mrs. Lewis was referred to you by Charlotte See? A. Again, it very well could be. Clients are —

Mr. Bell: Just a minute, if the Court please. He should testify from your own knowledge.

Mr. Britt: I will withdraw that question, (Tr. 205) Your Honor, and reframe it, if I may.

Q. In your discussions with Bob Lewis with respect to you representing his mother, isn't it a fact that you did discuss that she had been referred to you, Mrs. Lewis, referred to you by Charlotte See? A. It's not fresh in my mind that I did or didn't. I know she was referred in by someone. At that time I didn't know that we were going to be involved in what we are here today, and it didn't make an impression on me. It is very well she could have been.

Mr. Britt: All right.

The Court: You are saying you don't recall?

The Witness: Yes, Your Honor.

Q. You did know Charlotte See prior to January 27th or 28th? A. Yes, I knew of her, yes.

Q. But you did not know either Bob Lewis or Mrs. Lewis prior to that time? A. No.

Mr. Britt: That's all.

Redirect Examination

By Mr. Bell:

Q. Mr. Hans, you testified that Mr. Lewis was in your (Tr. 206) office after [illegible] ther had engaged your services as an attorney? A. That's correct.

Q. Will you tell us approximately when Mr. Lewis was in your office? A. Oh, I would say approximately — I believe Mrs. Lewis came in to see me around the first week in February, the latter part of the first week, and I think Mr. Lewis came in three or four days after that.

Q. All right. Now, sir, you stated to the Court, I believe, that you did discuss with Mr. Lewis certain matters that you had discussed with his mother, Mrs. Lewis, is that correct? A. That is correct.

Q. Was one of those items Charles Edward Bebout? A. Yes.

Q. Tell us about this conversation, please.

The Witness: Your Honor, may I—now I am getting into an area where some of the things I discussed with his mother which were not discussed with Mr. Lewis, and there were other things that were discussed with Mrs. Lewis and Mr. Lewis both.

The Court: Well, I can't determine what matters are privileged and what are not.

The Witness: In other words, I am just to (Tr. 207) convey the things that were discussed with Mr. Lewis and Mrs. Lewis?

The Court: Which are not privileged. After all, you are not forbidden from testifying. You are forbidden to disclose privileged matters.

A. Right. There was some question as to a security for a bond.

Q. Bond for whom? A. For Mr. Bebout.

Q. And who was discussing this with you? A. Mrs. Lewis and Mr. Lewis.

Q. The Defendant? A. Yes.

Q. All right. Continue. A. There was just a question of the legality of the deeds being in proper order, the mortgage deeds, the notes, and in general making sure what the prior liens were on the securities, the filling out of the mortgage deeds, having them properly executed.

Q. Now, I take it then from your testimony that the Defendant, Mr. Lewis, and his mother, Mrs. Lewis, were

considering posting bond for Charles Edward Bebout, is that correct? A. Yes.

Q. What other discussions did you have with Mr. Lewis (Tr. 208) concerning Charles Edward Bebout? A. Those were the only discussions.

Mr. Bell: No further questions.

Recross Examination

By Mr. Britt:

Q. Just a couple questions, Mr. Hans. How much was Mr. Bebout's bond at that time? A. The bond at that time was $80,000.00.

The Court: How much? $80,000.00?

The Witness: $80,000.00.

Q. And how many properties were involved of Mrs. Lewis'? A. There were three properties under discussion.

Q. And can you tell us the approximate value of those? A. Well, it would be a guess on my part to guess the approximate value.

Q. Well, not a guess, but an educated or— A. All right. I would say the one property would probably be worth $190,000.00. Another property would be worth approximately $60,000.00. Another piece of property would be worth somewhere in the neighborhood of $75,000.00.

Q. And isn't it a fact that those properties were in a corporation? A. That is correct.

Q. And that the Defendant, Bob Lewis, owns a portion of (Tr. 209) that corporation? A. That is correct.

Mr. Britt: That is all.

Further Redirect Examination

By Mr. Bell:

Q. Mr. Hans, I believe you testified as to liens and mortgages? A. Yes.

Q. Were these properties mortgaged? A. There were two properties that had a $10,000.00 mortgage on them.

Q. Is that all? A. On the two properties, yes. The one property which I estimated at $190,000.00, $175,000.00 to $190,000.00, had a $10,000.00 mortgage on, and the other property which I estimated at $75,000.00 also had a $10,000.00 mortgage on. In other words, it was a $20,000.00 blanket mortgage covering both properties.

Q. Two properties, and that is all the liens that were against these two properties? A. That is all.

Q. Now, whose name were these properties in? A. These properties were in, I believe it was Realco, Inc.

The Court: Mr. Hans, —

(Tr. 210)

The Witness: Yes, sir.

The Court: In view of the conversations that you had with Mr. Lewis after Mrs. Lewis had retained you, in view of the fact that you now realize that that is no longer privileged, those matters which were communicated to Mr. Lewis, did you tell Mr. Lewis that his mother in her retaining of you had asked you to go down and see Mr. Bebout? Was that part of the attorney-client relationship? If such a statement occurred, was that part any longer privileged?

The Witness: No, I don't believe that would be privileged, your honor.

The Court: All right. You feel that had all be divulged to Mr. Lewis?

The Witness: Yes, sir.

The Court: Tell him about the fact that his mother had come in and what she asked you to do?

The Witness: Yes.

The Court: All right.

By Mr. Bell:

Q. Mr. Hans, one question. Sir, did Mr. Lewis ask you to go see Mr. Bebout? A. I don't believe he—no, I don't believe he did. Now, may I explain my answer to the Court?

The Court: Yes.

(Tr. 211)

The Witness: Actually, on an $80,000.00 bond, it's quite an amount of bond to post for any individual. In all fairness to my client, I told her that I wanted to talk to this individual first, because I knew of his background from the newspapers, his criminal record, and that after talking to her, I may—in fact, I advised her against posting any bond at all, and tying any of her properties up, and I felt that this was my obligation as an attorney to consider all the aspects by talking to him and then advising her from my findings, and it was my advice to her not to go bond on him.

Q. Did you discuss this bond with Mr. Lewis? A. If it was discussed, it was discussed in the presence of his mother.

Q. And was Mr. Lewis in effect trying to, through his mother, have a bond posted for Mr. Bebout? A. No, I don't believe that he would be exerting any influence.

Q. I didn't ask that. A. Well, I don't know how to answer your question, in other words.

Q. In your presence and in the presence of Mr. Lewis and his mother, did Mr. Lewis indicate that he wanted a bond posted for Charles Edward Bebout? (Tr. 212) A. Well, yes and no. Again, if I may qualify my answer—

Q. Certainly, you may explain your answer. A. All right. In other words, I think that he was susceptible to take the advice which I gave his mother. In other words, I feel that he had known Mr. Bebout before; that if he could help Mr. Bebout, that he may have felt an obligation to help him,

but yet at the same time he was perfectly content with the conclusion which I reached and the conclusion which I conveyed to his mother of not to go on the bond.

Q. Well, then, you previously testified you were discussing the legalities of the property and so forth. A. That's correct.

Q. Was that before or after you made the decision not to go on the bond? A. That was before I made the decision. First of all I wanted to check into the property, see if there was any liens or any encumbrances on them before going any further and wasting my time.

In other words, if the properties had been encumbered to such an extent that the Bonding Company, which I had been in contact with also, would not accept them as they were—in other words, if there had been an $80,000.00 or $90,000.00 mortgage on these properties, I am sure the Bonding Company would not have accepted them under any conditions and, (Tr. 213) therefore, the security which they would have requested would have been gone.

Q. Did you talk to the Bonding Company? A. Yes, I did.

Q. Did they accept or reject the property? A. The Bonding Company? Well, it was never—they were never given an opportunity to accept or reject due to the fact that after my advice to her not to go through with it, there was never a yes or no proposal put to the Bonding Company.

Q. I see. Now, in the presence of Mr. Lewis and Mrs. Lewis, was there anyone else present at that time discussing this bond? A. No.

Q. Do you know of your own knowledge whether or not Mr. Lewis made other attempts to post bond for Mr. Bebout? A. No, I don't know.

Mr. Bell: No further questions.

Mr. Britt: I think that is all, Mr. Hans.

The Court: Before this witness leaves the stand, I take it now that all objections and exceptions in connection with privileges are withdrawn.

Mr. Britt: Well, your Honor, I'd still like to preserve our record in that regard.

The Court: Well, Mr. Britt, —

(Tr. 214)

Mr. Britt: May we approach the bench, your Honor?

The Court: Yes, but, Mr. Britt, you made rather full inquiry into this relationship.

Mr. Britt: I realize that, your Honor, only because the door was opened and I felt it necessary to go on with it.

The Court: All right. If it was opened, you opened it.

Mr. Britt: Thank you.

The Court: Step down, please.

Mr. Bell: As far as I am concerned, this witness may be excused. Any objections, Mr. Britt?

Mr. Britt: No.

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(Tr. 251)

Mr. Britt: Mark this Defense Exhibit B and B-1.

(Thereupon, Defendant's Exhibit B and B-1 were marked for purposes of identification.)

Q. Mr. Bedell, I will hand you what's been marked for identification as Defendant's Exhibit B and ask if you can tell us what that is? A. That is an envelope addressed to Robert Lewis care of Mr. Britt.

Mr. Bell: Now, if the Court please, I will object unless he has personal knowledge of this, this witness.

The Court: Sustained.

Q. Mr. Bedell, have you learned about Defendant's Exhibit B?

(Tr. 252)

Mr. Bell: If the Court please, I object. It is not in evidence.

The Court: Sustained.

Mr. Britt: Your Honor, I may have to ask the Clerk to leave the room because he may be a witness. He was present when it was opened.

Mr. Bell: May we approach the Bench?

The Court: I know what you have there. I don't know how that can be relevant in any way to this case.

(Conference at the Bench.)

The Court: Simply let the record show that I know what the Exhibit is, and counsel attempted to examine the witness on it, and is attempting to use it, and I consider it entirely irrelevant to this trial.

* * * * * * * * * * *

Charles Edward Bebout,

called as a witness, being first duly sworn, was examined and testified as follows:

Cross Examination

(Tr. 316)

Q. And who was your attorney with respect to your case? A. Mr. Paul Scott.

Q. You have fully discussed this matter with him, have you not? (Tr. 317) A. Yes, sir.

Q. I assume that you would have no objections to Mr. Scott testifying in this matter, would you, as to what you have told him now with respect to privileged communications between you and he?

Mr. Bell: If the Court please, —

A. Yes, sir, I would.

Q. You would not be willing to waive the privilege and let Mr. Scott testify here?

Mr. Bell: If the Court please, he has already answered.

The Court: Sustained.

Q. The testimony here, have you ever so testified before? A. Yes, sir.

Q. Where and when? A. To a Federal Grand Jury earlier in the year.

Q. And as you recall, is your testimony now identical with what it was then? A. To the best of my knowledge, yes, sir.

Q. You never told this story to your attorney, have you? A. Yes, sir.

Mr. Bell: Just a minute, if the Court please, I object. Privileged.

(Tr. 318)

The Court: Sustained.

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(Tr. 327)

Q. When did you call Roy Jaynes? A. I would say it was December 24th. I called him several times prior to that. That was the last phone call.

Q. And you learned that the F.B.I. had been following him for about a week, isn't that right? A. After my arrest, yes, sir.

Q. You learned that after your arrest that they had been following him for about week before your arrest? A. That's what they told me, yes, sir.

Q. And isn't it a fact that Bob Lewis had told them that one of your closest friends was Roy Jaynes?

Mr. Bell: Objection.

The Court: Sustained.

Q. Didn't you also learn that Bob Lewis had informed the F.B.I. that Roy Jaynes was one of your best friends?

Mr. Bell: Objection.

The Court: Sustained.

Q. Do you have any knowledge as to how the F.B.I. learned (Tr. 328) to follow Roy Jaynes? A. Yes, sir. Yes, sir. It is knowledge that was given to me by another F.B.I. agent in Columbus.

Q. The Court is not going to permit you to tell —

Mr. Bell: I will object.

The Court: Are you objecting?

Mr. Bell: Yes, sir.

The Court: Sustained.

* * * * * * * * * * * *

(Tr. 330)

The Court: Are you going to mark that?

Mr. Britt: I may, Your Honor, at this time.

The Court: I think you should, you have been reading from it. The Jury ought to see the whole thing.

Mr. Britt: Mark this Defendant's Exhibit C.

(Thereupon, Defendant's Exhibit C was marked for purposes of identification.)

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(Tr. 356)

Q. I will hand you what's been marked for identification as Defendant's Exhibit H and ask you what that is?

Mr Bell: Let the record show (Tr. 357) that this is a single sheet of paper and an envelope dated April 3rd, 1963.

Q. Mr. Bebout, will you please answer my question as to what that is? A. It is a retraction in my own handwriting of the Grand Jury testimony.

Mr. Bell: Just a minute, may I see this?

Q. It is your handwriting, is it not? A. But the envelope is a forgery, did not go with it. I gave this as a personal confidential communication to my attorney, Mr. Paul Scott,

and Mr. Scott in his crooked dealings has turned it over to you.

Mr. Bell: Just a minute. If the Court please, I object to any communications made by this Defendant, testimony by this witness as to communications made to his attorney.

Mr. Britt: On what ground?

Mr. Bell: Privileged.

Mr. Britt: It is his privilege, it is not the attorney's privilege, nor your privilege.

Mr. Bell: I think, if the Court please, the witness testified this morning that he did not wish to waive that privilege.

(Tr. 358)

The Court: He certainly did. Take the Jury back to the Jury Room.

(The Jury retires to the Jury Room.)

The Court: One of the problems here, Mr. Bell, is this is not addressed to an attorney, it is addressed "To Whom it May Concern."

Mr. Bell: All right, sir. May I make inquiry of the witness as to whom that was sent to?

The Witness: I handed it personally to Mr. Paul Scott.

The Court: The communication itself appears to belie any confidentialness. It is "To Whom it May Concern: I wish it to be known to all interested parties," is the way it begins. I won't violate the rest of it in the event that I am wrong here. I would seem to be right, however.

Mr. Bell: Very well.

The Court: Unless there is other testimony concerning this which would throw a little more light on it, I don't know. It is in writing.

Mr. Bell: May I say first of all, Your Honor, the Grand Jury testimony is not in issue. There has never been any allegation made that—

(Tr. 359)

The Court: I don't know where he is going with that.

Mr. Britt: My only purpose in that—

The Court: I am not trying his lawsuit.

Mr. Britt: —was the fact that it states that "In my testimony," and that is the only case I know of that he probably had testified and was able to determine here that he had previously testified on oath.

The Court: Well, it goes beyond that: "to all interested parties that any and all testimony and statements."

Mr. Britt: Correct.

The Court: And then he goes on.

Mr. Britt: But the testimony portion being on oath and this being on oath.

The Court: You are objecting on the ground that this is a confidential communication? I don't know where it came from. He claims he sent it to his lawyer.

The Witness: I handed it to Mr. Scott. This was part of the deal. They were to make my bond if I retracted my testimony.

(Tr. 360)

The Court: I don't want to hear all that. The attorneys will bring that out.

I am surprised that this ends up in the defense's hands this way. Now, I cast no doubts on your reputation or ability and I do not mean that, do not intend that, do not take that from what I have said. You are an attorney trying a lawsuit and certainly it is your duty to obtain all available evidence that will assist you in the defense of your client.

If you don't do that much, then you would be subject to criticism.

Mr. Britt: Frankly, Your Honor, that's the reason I have gone through all these others for handwriting comparison purposes.

The Court: But if what the witness says is true, it is surprising that the person to whom it was given would handle it in this way.

Mr. Britt: I think that is correct, Your Honor, and I can state for the record that to my knowledge and belief the statement of Mr. Bebout concerning how this came into my hands is not correct.

The Court: Oh, all right.

Mr. Britt: This did not come to (Tr. 361) me through Paul Scott.

The Court: Since the Jury is out now, I don't want to take another recess in 10 or 15 minutes. We will recess now. Whatever is going to be used by way of documents, if you anticipate anything, any objections that will arise over anything, turn over as many of them as you can, at least those that you feel will not jeopardize you in any way.

Mr. Britt: I believe these are all that will take any time as far as reading is concerned. But, with the Court's permission, I understand from Mr. Bell that Mr. Bebout is their last witness and I would much prefer, rather than a recess at this time, if we could proceed because my cross examination will be very brief from this point forward.

The Court: All right, fine. Call the Jury back in.

(The Jury returned to the Jury Box.)

By Mr. Britt:

Q. Mr. Bebout, in your duties with ADT you appeared in Court on occasions, did you not? A. Yes, sir.

Q. As a witness? (Tr. 362) A. Yes, sir.

Q. How often have you appeared in Court as a witness? A. Just a few times.

Q. You understand the obligation of your oath? A. Yes, sir.

Q. And you do believe in God? A. Yes, sir.

Q. I hand you Defendant's Exhibit H and ask you to read it to the Jury, please?

Mr. Bell: I object, Your Honor. I don't believe it is in evidence yet.

Mr. Britt: We will offer it, Your Honor, and request it be admitted and request it be read to the Jury.

The Court: I will receive it in evidence, and if you want it read to the Jury, you read it. You read it. I don't think the witness ought to read it.

Mr. Britt: All right, Your Honor.

(Thereupon, Defendant's Exhibit H was admitted into evidence.)

Q. This is in your handwriting, is it not? A. Yes, sir.

Q. The same as all these others are in your handwriting? A. Yes, sir.

(Tr. 363)

Q. Will you please look over my shoulder to be certain that I read it right, and if I read it incorrectly, you please correct me.

The Court: Just a moment. Did I say this was received in evidence?

Mr. Bell: Yes.

The Court: All right.

Mr. Britt: "To Whom it May Concern: I wish it to be known to all interested parties that any and all testimony and statements given against Robert Hall Lewis were false and not given freely by myself. Since my arrest, I have been threatening Mr. Lewis that if he did not help

me make bond, I would involve him in this robbery of which I am accused. When Mr. Lewis refused, I implicated him to the fullest extent.

The U. S. Attorney and the Federal Bureau of Investigation state, "We want Lewis, if we don't get testimony against him, we will involve your mother and your best friend, Roy Jaynes, in this matter."

I realize what I have done constitutes perjury and probable prosecution for same. My only hope is Mr. Lewis can forgive me for this evil and unspeakable thing I have done. The above statement (Tr. 364) is true and correct, so help me God."

Signed Charles Edward Bebout. Correct?

The Witness: Yes, sir.

Mr. Britt: That is all, Mr. Bebout.

Redirect Examination

By Mr. Bell:

Q. Now, Mr. Bebout, you have testified here today under oath, have you not? A. Yes, sir.

Q. You testified to the Grand Jury under oath? A. Yes, sir.

Q. All right, sir. Now, I will hand you Government's Exhibit H. Tell the Court and the Jury, sir, was the testimony that you gave under oath to the Grand Jury true? A. Yes, sir, in every respect.

Q. Was the testimony you gave here today true? A. Yes, sir.

Q. Why did you write that statement? A. I was offered a deal by Mr. Scott, "Go ahead and testify before the Grand Jury—"

Mr. Britt: Your Honor, I am going to request at this time that this witness be instructed that he is very likely to waive privilege (Tr. 365) if he goes into this, and I think,

Your Honor, he should understand that if he goes into the oral communications between he and his attorney that he is subject to the fullest cross examination concerning those communications.

The Court: No question about it.

Q. Let me ask you, Mr. Bebout —

The Court: You are not objecting to the testimony?

Mr. Britt: I am only requesting Your Honor, to instruct him in that regard at this time so that he understands it.

The Court: We will instruct him, and the United States Attorney is here and has him on the stand as his witness, when he waives he waives by his actions and statements.

Q. Now, Mr. Bebout, is this statement as you have set forth and has now been known as Defendant's Exhibit H, is it a true statement? A. It is not true in any respect.

Mr. Bell: No further questions.

Mr. Britt: Your Honor mentioned a few moments ago concerning a recess. I would request it at this time so that we may contact Mr. Scott, and I feel that I am compelled to discuss this (Tr. 366) matter with Mr. Scott prior to further cross examination since apparently the privilege has been waived.

The Court: I don't think he has waived it. He hasn't gone into the very thing that you were concerned he might go into.

Mr. Britt: He went into, Your Honor, the fact that this was given to Mr. Scott and what the discussion was as to why.

Mr. Bell: No, he did not, Your Honor.

The Court: No, he didn't. There was a statement about a deal which was really not—I don't know whether it was responsive or not, but nobody knows what the deal is as

yet. I certainly don't. I haven't heard any testimony concerning it.

Mr. Britt: May we have the record read back concerning just what he said in that regard, Your Honor?

The Court: Yes.

(The record was read.)

Mr. Britt: That's right, Your Honor.

The Court: It is his communications to the attorney which are privileged.

(Tr. 367)

Mr. Britt: And the attorney's communications to him, Your Honor.

The Court: Should be privileged too, yes.

Mr. Britt: And he has said what the communication was from him, from his attorney to him.

The Court: All he said so far, the gist of what he is saying is that this letter was given to his attorney. Substantially that is what he said.

Mr. Britt: And why, "because my attorney advised me that I have a deal, go ahead and testify before the Grand Jury."

The Court: Well, it could be responsive because the question is so broad. Does he still claim the privilege?

Mr. Bell: Do you still claim the privilege of any communications between you and Mr. Scott?

The Witness: Yes, sir.

The Court: I will consider this for a few moments. Come back in to Chambers with the record. On recess I want to see both counsel in Chambers. The Court will recess for ten (Tr. 368) minutes.

(Recess.)

The Court: Ladies and gentlemen, when the United States Attorney asked the witness as to why he had writ-

ten Defendant's Exhibit H, the Defendant responded to that question and you heard what he said, that something had existed between him and that attorney who was mentioned, to whom the witness claims he wrote the letter. Disregard the witness's answer, disregard it, obliterate it from your minds. It really adds nothing to the case. Do not under any circumstances give it any consideration whatever.

And, gentlemen, as to the communications between the witness and his attorney, those will be held to be privileged. Proceed.

Mr. Bell: I have no further questions.

The Court: Now, for the benefit of the Jury here, too, since you have heard objections and some discussion by the Court in connection with privileged communications between attorney and client, so that you understand what this about and that there is no effort on the part of the United States Government or the defense or the Court to (Tr. 369) keep things from you which you ought to know, that is a long established rule of law that clients may communicate with their attorneys and whatever communications are made to their attorneys outside the presence of other parties are privileged. It has its root in a very fine policy to enable clients to make full disclosures to their attorneys so that their attorneys may be able to adequately represent them, to understand the entire case, and as a result of that, those communications are privileged and cannot be inquired into.

Anything further of this witness, gentlemen?

Mr. Bell: No, Your Honor.

Mr. Britt: The one thing, Your Honor, and again purely for the purpose of the record, I would like to ask one question. I am not certain that Mr. Bebout understands that it

is his privilege and that it is not the attorney's privilege and that he has the right to waive that privilege if he so desires and we should call the attorney to testify. I would like to ask him this question.

Recross Examination

By Mr. Britt:

(Tr. 370)

Q. If we were to call Mr. Scott as a witness, would you permit him to testify? A. If I have the prerogative, I would say, no, sir.

Mr. Britt: Okay.

Mr. Bell: Nothing further.

The Court: Just a moment. I have one question concerning Defendant's Exhibit H. You had testified that you wrote Defendant's Exhibit No. H. That was the last Exhibit that was shown to you addressed "To Whom it May Concern"?

The Witness: Yes, sir.

The Court: That is your writing?

The Witness: Yes, sir.

The Court: Did you mail that Exhibit?

The Witness: No, sir.

The Court: To Mr. Lewis?

The Witness: No, sir.

The Court: When you wrote the letter, what did you do with it?

The Witness: I handed it to my attorney, Mr. Paul Scott.

The Court: Where were you when you gave it to him?

The Witness: In the attorney's (Tr. 371) room at the City Prison.

The Court: And you do not wish to testify concerning the circumstances of handing that to him because they in-

volve privileged communications between you and your attorney, is that correct?

The Witness: I believe it would bring too many irrelevant, scandalous type things in.

The Court: But the fact remains, am I correct in saying to you, that you do not wish to testify concerning the letter, the circumstances of your handing it to him, because you rely on the privileged communications between you and your attorney.

The Witness: Yes, sir.

The Court: All right. Do you know Charlotte See?

The Witness: If I have ever seen her, I didn't know who she was. And, I was shown her picture. When I was shown her picture by a Federal agent I never recognized her as anyone I had seen before.

The Court: Insofar as you know, have you ever been to her home?

(Tr. 372)

The Witness: No, sir.

The Court: Did you testify on direct examination that you cased the Ohio Federal Savings and Loan Company which you robbed?

The Witness: I testified before the Grand Jury to that effect but I don't believe I testified to it here.

The Court: Did you?

The Witness: Yes, sir, a number of times.

The Court: So that all here understand, what do you mean by casing the bank?

The Witness: Driving up to the bank and going in and making some minor transaction such as a change for a twenty or something at noontime or 1:00 o'clock, different times of the day, to see who was in the bank and fairly much of a norm as to see what the tide of customers are,

and so forth, at a certain pre-determined time of the day and what the traffic conditions are, where the police cruisers usually are, anything you consider you can observe in that respect.

The Court: In your casing of the Ohio Federal Savings and Loan Company, were you alone?

(Tr. 373)

The Witness: I was alone every time I went to the bank, sir.

The Court: Did you ever discuss the fact that you had cased it with anyone?

The Witness: Yes, sir.

The Court: With whom?

The Witness: Mr. Robert Hall Lewis.

The Court: When did you decide that you would rob that bank, that Savings and Loan Company?

The Witness: This one in particular was shortly after December 1st. I would say around the 4th or 5th. I was going to rob another one, another Ohio Federal Savings and Loan on December 1st and I went ahead with the plans to the extent of almost going in the bank, and I was deterred from that.

The Court: You were deterred from it?

The Witness: Yes, sir.

The Court: How?

The Witness: Mr. Lewis went in the bank first and came back to me, I was in Great Southern Shopping Center sitting in another (Tr. 374) dealer borrowed car with my gun and bags, and so forth, and said, "I believe it is a stake-out, things don't look right." That was shortly after the Upper Arlington, Ohio, Federal Savings and Loan robbery.

The Court: When did you first tell Mr. Lewis that you were going to rob the Ohio Federal Savings and Loan Company?

The Witness: In Whitehall?

The Court: The one you actually robbed, Whitehall?

The Witness: Well, I would say it was just shortly after the first of December. I looked at it prior to that, but didn't like the looks of it at the time. This was in mid November.

Mr. Britt: Your Honor, may I approach the Bench for a moment?

The Court: Yes.

(Conference at the Bench.)

The Court: That is all I have. One other question. I am not sure whether I understood this correctly. Did you ever display to Mr. Lewis your equipment?

The Witness: Yes, sir, including the 45 automatic. We target practiced with it (Tr. 375) several times down at the Turfside Club. And the equipment we were using such as the portfolios we used were purchased by Mr. Lewis at Woolco on South High Street.

The Court: That is all I have.

Mr. Britt: May I inquire a little further, Your Honor?

The Court: Yes. Very briefly, please. I think we have covered about everything we can.

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(Tr. 378)

The Court: You are moving for a directed verdict of acquittal?

Mr. Britt: Yes, Your Honor. I would like to be heard on it as to the various branches thereof, if I may. The indictment charges that the Defendant on or about December 14th at Columbus, within the Eastern Division of the Southern District of Ohio, did unlawfully and knowingly conceal.

First, I believe there is a variance as to the date and a variance as to amount in the $7500.00. Secondly, I recall no place in the record (Tr. 379) where it was shown at all as to venue, that this bank was located within the Eastern Division of the Southern District of Ohio, or for that matter, even within the City of Columbus, Ohio. I recall no testimony in that regard. Thirdly, I feel that there is no substantial evidence upon which reasonable minds could differ as to the guilt of this Defendant. The only evidence to implicate him in the slightest degree is that of Charles Edward Bebout, the confessed bank robber and a confessed man with prior convictions. I feel that without question his testimony here has been completely impeached as to its veracity. The fact that he is not willing to go forward with all of the facts in this thing, Your Honor, his denial and refusal to permit others with whom he has discussed the matter to testify, particularly his attorney. I am not certain of the law in that regard as to whether or not counsel is entitled to comment on that to a Jury, but certainly I feel we are entitled to comment on that refusal to a Court in exactly the same manner as the prosecution would be entitled to comment if the Defendant refused to take the stand. I feel that this certainly, accompanied by his handwriting, as, "I shall answer unto God," or something of that nature, impeaches him to such (Tr. 380) a degree that reasonable minds could not differ in that regard. The only other witness to in any way implicate this Defendant in this matter is Charlotte See, one whom the Court has instructed be investigated, and certainly upon whose testimony not much faith could be laid.

We feel, Your Honor, that because of these reasons, the Court should at this time determine the matter as to whether or not reasonable minds could differ with the

aspect concerned that proof must be beyond a reasonable doubt. Under these circumstances, Your Honor, with these two witnesses such as they are, we feel that the Court would be bound to sustain this motion.

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(Tr. 387)

Q. Have you subsequently learned who made that phone call?

Mr. Britt: Object to this, Your Honor.

The Court: Sustained.

Mr. Britt: Your Honor, I would request the Court to instruct the Jury to disregard this line of testimony unless this witness knows of his own knowledge as to who or what this was about.

The Court: He may pursue the line of questioning but the form is something else. (Tr. 388) I don't see anything wrong with your examining to determine how the call was made, who made it, and so forth.

Q. Do you know who made that phone call to Mr. Lewis?

A. I have no firsthand knowledge. The only thing I know about it, Mr. Bebout said he made it.

The Court: Did you speak to Mr. Bebout about it?

The Witness: He brought it up, Your Honor.

The Court: Who did?

The Witness: Mr. Bebout.

The Court: When?

The Witness: On one of his interviews at City Prison.

The Court: That's all right. Tell us about that. Mr. Bebout volunteered somehow?

(Tr. 399)

Charles Edward Rogers,

being first duly sworn, as provided by law, was examined and testified as follows:

Direct Examination

By Mr. Britt:

Q. Will you please state your name, sir? A. Charles Edward Rogers.

Q. And where do you live, Mr. Rogers? A. 981 Oak Street.

Q. Mr. Rogers, I will call to your attention to December this past year and ask you if you recall December 14th? A. Yes, sir.

Q. Where were you on that morning? A. I was at home.

Q. Can we just sort of go a little bit from there. What time did you leave your home? A. About 11:00 o'clock or omething like that.

Q. Where did you go? A. Thelma Lewis's residence.

Q. And where was that? A. I think 935 Broad Street.

Q. And what time did you arrive there? (Tr. 400) A. Well, something like 11:30, I suppose.

Q. And Mr. Rogers, how do you fix this particular date? A. Well, I was told that that was the time.

The Court: I can't hear that.

Mr. Britt: He says he was told that was the date.

Mr. Bell: Just a minute, if the Court please, I would object unless this witness can testify from his own knowledge.

The Court: Yes. The Jury will completely disregard thus far where he was on the 14th of December.

Mr. Britt: I think I can tie this in definitely, Your Honor.

The Court: All right.

Q. How long were you at the Lewis residence on that day, Mr. Rogers? A. Well, I wasn't there very long.

Q. And who did you see there? A. Well, Bob was there, and Mrs. Lewis.

Q. And where did you go from there? A. To the bank.

Q. With who? A. Bank of Ohio.

Q. With who? (Tr. 401) A. Mrs. Lewis.

Q. What did you do at the bank? A. I got some checks cashed.

Q. And from that transaction have you been able to determine the exact date? A. Well, it would be on record at the bank, I suppose, them checks I got cashed.

Q. And what was that date? A. 14th.

Q. Of what? A. December.

Mr. Bell: Objection, Your Honor, unless he can testify from his own knowledge.

The Court: Sustained. The jury will completely disregard it. All this man said is that it would be on record at the bank, not that he has seen the record at the bank. The only reason he is testifying that this was the 14th, he says, is because he was told it was the 14th.

By Mr. Britt:

Q. Where did you go from the bank, Mr. Rogers? A. Well, I come back with Mrs. Lewis to her residence and then I went over home.

Q. And did just the two of you go to the bank? A. Just the two of us.

(Tr. 402)

Q. And what was the purpose of cashing these checks? A. I needed money.

Q. Why did she go with you? A. Well, I asked her to take me. I don't have a car.

Q. Do you know what she was doing that day?

Mr. Bell: I will object, Your Honor.

The Court: Well, in his presence.

Mr. Bell: I will withdraw it.

Mr. Britt: May we approach the Bench just a moment? (Conference at the Bench.)

By Mr. Britt:

Q. Mr. Rogers, which bank did you go to? A. Bank of Ohio, the one right there south of Lazarus.

Q. Did you also go to the Huntington Bank with Mrs. Lewis? A. Yes.

Q. And what did she do there? A. I don't know what she done.

Q. Did she go to the safety deposit boxes? A. Yes.

Q. And what did she get there? A. I don't know.

Q. You mean you don't know what she got or you don't (Tr. 403) know what you call it? A. I don't know.

Q. To refresh your recollection, was it an abstract title concerning some real estate? A large stack of papers about this size?

Mr. Bell: If the Court please, if he knows.

The Court: Sustained.

Q. Do you know? A. I don't remember.

Q. And these checks, whatever that you cashed, were they your own personal checks? A. My checks.

Q. Do you have them, have they been returned to you? A. No, they was government checks, bonds. E bond checks.

Q. E Bonds? A. Yes, sir.

Q. And, they have not been returned to you, then? A. No.

Q. So there is no way that actually you can go and get them to definitely determine the date, is that correct? A. Well, I suppose the Government has got them yet, wouldn't they, or not?

Q. I imagine they would have them, but we don't. Mr. (Tr. 404) Rogers, do you recall what day of the week it was? A. No, I don't.

Mr. Britt: Thank you very much.

The Court: Now, with respect to this witness's testimony thus far—are you going to cross examine?

Mr. Bell: No.

The Court: The Jury will completely disregard at this point whether this was the 14th of December because this witness has specifically said the only way, the only means by which he knows this was the 14th is that he was told it was the 14th, and we don't even know who told him. So, insofar as this testimony relates to time, date, disregard it entirely.

(Tr. 420)

The Court: No, no. This testimony adds nothing whatever to this case, absolutely nothing. You may step down.

Mr. Britt: Note exception.

(Tr. 421)

The Court: And the Jury is instructed to disregard the testimony of this witness who just left the witness stand.

Mrs. Edgar Q. Lamb,

being first duly sworn, as provided by law, was examined and testified as follows:

Direct Examination

By Mr. Britt:

* * * * * * * * * * *

(Tr. 422)

Q. Mrs. Lamb, do you feel that you know the Defendant, Robert Lewis well enough to know his character, that is, the inner man as opposed to reputation, as to what others think of him? A. Positively.

Mr. Bell: Object.

The Court: Sustained.

Mr. Britt: Is that because of the form of the question, Your Honor?

The Court: She can testify as (Tr. 423) to his reputation.

Mr. Britt: And also, I believe, as to character, Your Honor.

The Court: Not that I know of.

Q. Mrs. Lamb, I believe you testified you know him well enough to know his character, is that correct? A. Yes, positively.

Q. And to form an opinion in that regard? A. Yes.

Mr. Hummel: Objection, Your Honor.

The Court: Sustained.

Mr. Britt: May I go ahead and establish my record, Your Honor?

The Court: You mean in the presence of the Jury?

If you want to put something on the record, put it on the record. If I am sustaining the objection, I certainly don't want it to reach the Jury.

Mr. Britt: (Proffer) Let the record show that if permitted to testify, this witness would testify that the Defendant is of good character as respects his honesty, law abiding qualities, truthfulness.

That is all, Mrs. Lamb. Thank you very (Tr. 424) much.

Mr. Bell: Just a minute.

The Court: The Court will recess for ten minutes.

(Recess.)

The Court: Ladies and gentlemen, you will limit in your consideration of this case, the testimony of this witness on direct examination only to reputation of the Defendant insofar as she knows it, as it bears on truth and veracity.

Proceed.

Mr. Hummel: If Your Honor please, is the record going to be straightened out, does that correct the record? Her

testimony was, of course, much broader than that. I am not sure it is sufficiently clear that this limits her testimony.

The Court: She has testified that she has the means of knowing and does know the Defendant's reputation in the community, and she has said in substance that the reputation is good, and I am saying to this Jury that that testimony as to reputation is limited only to reputation for truth and veracity.

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(Tr. 427)

Cross Examination

Q. Well, specifically, did you observe any conversation between Charlotte See and Charles Bebout? A. Not that I—

Mr. Bell: Objection.

The Court: He said that he did not.

Mr. Bell: I didn't hear the (Tr. 428) answer.

The Court: He said he did not.

Q. During the course of the evening, did they have any conversation that you know of? A. Well, I would imagine.

Mr. Bell: Objection.

The Court: Sustained. He has already said he didn't.

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(Tr. 429)

Father Valerian Lucier,

being first duly sworn, as provided by law, was examined and testified as follows:

Direct Examination

(Tr. 432)

Mr. Britt: Your Honor, as respects character as opposed to reputation, I wonder if the record may show the same here as with Mrs. Lamb?

(Tr. 433)

The Court: Now, Mr. Britt, be careful because we are going to open up things here that you are not going to want opened up. Approach the Bench if you want to talk to me about it.

(Conference at the Bench.)

Mr. Britt: (Proffer) Let the record show that if permitted to answer, Father Lucier would state that he feels he knows the Defendant well enough to know the Defendant's character relative to truthfulness and veracity and that in his opinion the Defendant's character is good in that respect.

You may cross examine.

* * * * * * * * * * *

Redirect Examination

(Tr. 435)

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By Mr. Britt:

Q. Are you also aware of the fact that that armed robbery sentence was commuted?

Mr. Bell: I object.

The Court: Sustained. The Jury will entirely disregard it, the inference in Counsel's question. And, remember what I said, these statements by counsel are not evidence.

You put this witness on for reputation. He has testified to reputation.

Mr. Britt: What I am trying to get at, Your Honor, is whether or not the investigation in that regard he is aware of, too, and does that have bearing upon his reputation and his testimony.

The Court: No.

(Tr. 436)

Mr. Britt: May I make another proffer, then?

The Court: Do you know what this witness is going to say by way of a proffer?

Mr. Britt: I believe I do. I may ask him.

The Court: Go ahead, quietly and very privately.

(Mr. Britt confers with the witness.)

Mr. Britt: (Proffer) Let the record show that if permitted to testify, Father Lucier would testify that he is aware of the fact that the armed robbery conviction was commuted to unarmed robbery, and that that commutation of sentence also plays a part in the facts upon which he bases his testimony.

That is all, Father. Thank you very much.

The Court: That is all. Thank you.

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Redirect Examination

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By Mr. Britt:

(Tr. 452)

Q. I will hand you what has been marked Defendant's Exhibits I and I-1, and ask if you can tell us what that is?

Mr. Bell: Now, if the Court please—

(Tr. 453)

The Court: Not what they are. Have you ever seen those before? Do you recognize them?

The Witness: Well, of course, this is what we wrote.

The Court: Do you have any handwriting on those papers? Is there any of your handwriting on there?

The Witness: No, no.

By Mr. Britt:

Q. Have you seen those before? A. Yes, sir.

Q. When? A. When Mr. Lewis and I were sitting at a back table.

Q. All right. When to your best recollection—I will ask you this first. Did you see these papers prepared, written? A. I think so.

Mr. Bell: Objection.

The Court: Sustained.

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(Tr. 457)

Joseph W. Ray, Sr.,

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Britt:

* * * * * * * * * * * *

(Tr. 459)

Q. Can you determine from your diary as to what time it would have been during the day? A. Yes, sir.

Q. And, what time?

Mr. Bell: I object, again.

The Court: Overruled. I think he can do that, and he will have to show us how he did it.

Q. Go ahead. A. I can do that.

Q. All right, sir. A. The notation before that was with a very important client that took quite a bit of time and probably the entire forenoon, and apparently I did not go back until after lunch.

Mr. Bell: Objection.

The Court: Sustained. This is entirely too flimsy. Tell us what your notes show, Mr. Ray.

The Witness: Beg pardon?

The Court: Tell us what your notes show.

Q. What do your notes show? A. Show that he called when I was out and that I called back.

The Court: Do they show when you called back?

The Witness: No, but I would know.

(Tr. 460)

Q. Do you know what time you were out? A. All forenoon and during the noon hour.

Q. And, what time did you go back to your office that day? A. I can't tell you that, sir, except by what the usual habit is.

Q. What time would that be?

Mr. Bell: Objection.

The Court: Sustained.

The Witness: Your Honor, the fact that my diary shows that there are a number of notations of interviews following this one would indicate it would have to be early in the afternoon. That's all I can tell you.

The Court: The jury will disregard the statement of the witness. You can tell us what your notations show, just what they show, that's all.

Q. What do your notations show as to that day, Mr. Ray? A. You mean as regard to Mr. Lewis?

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(Tr. 467)

Albert Giannetta,

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Britt:

* * * * * * * * * * *

(Tr. 469)

The Court: Sustained. You were his parole officer, is that correct?

The Witness: Yes, sir.

The Court: Do you know a number of (Tr. 470) people who know Mr. Lewis?

The Witness: The only one that I actually knew, let's say, is his mother.

The Court: Other than that you don't know people at all?

The Witness: No, sir.

The Court: Do you believe that you know him, not what your opinion is of this defendant's reputation in the community, but do you believe that you have the means of knowing his reputation for truth and veracity, that is, his reputation in the community?

The Witness: I can only answer that saying, no, sir, I don't.

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(Tr. 470)

Mr. Britt: Your Honor, I believe it can be stipulated between counsel, I understand, that if Helen K. Ashton were called to testify she would testify that she is the Manager of the Safety Deposit Box Department of the High-Town Office of the Ohio National Bank, and that Mr. Charles E. Rogers entered safety deposit box No. 3982 on December 14, 1962 at 11:40 a.m., and was witnessed by Mary Bailey, that the safety deposit box card so shows. That he also entered safety deposit box No. 3095 on December 14 (Tr. 471) at the same hour witnessed by Mary Bailey.

Mr. Bell: We will stipulate that the records so state.

Mr. Britt: That the records of the bank so state?

Mr. Bell: That's right. Nothing further.

The Court: All right.

Mr. Britt: And further that if, I believe it is, R. E. Thomas, Manager of the Safety Deposit Box Department of the Huntington National Bank were called to testify, he would testify that the records of that bank show that—

Mr. Bell: Just a minute, if the Court please. May we approach the bench on this?

The Court: Yes.

(Conference at the bench.)

The Court: That evidence is offered to establish the date about which Mr. Rogers was testifying?

Mr. Britt: Correct, Your Honor. That if Mr. Thomas, I believe the name is, Manager of the Safety Deposit Department of the Huntington National Bank of Columbus, were called to testify he would testify that the records of that bank show that the abstracts stored with them were removed by (Tr. 472) Mrs. Thelma Lewis and that the records show that she signed a release stating all of the abstracts were removed on December 14, 1962 at 3:43 p.m., both of those dates being December 14, 1962.

We would like to mark these as exhibits and offer them in evidence.

The Court: That's so stipulated, is that right?

Mr. Bell: Yes, Your Honor.

The Court: They are received.

(Thereupon, Defendant's Exhibits J-1 and J-2 were marked for purposes of identification and admitted into evidence).

Robert Hall Lewis, Jr.

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Britt:

* * * * * * * * * * *

(Tr. 475)

Q. Bob, have you been convicted of a felony? A. Yes, sir, I was.

Q. When was that? A. June of 1955.

Q. And, what was that felony? A. Armed robbery.

Q. Is that conviction still a portion of your record or has anything been done concerning it?

Mr. Bell: Objection.

The Court: Sustained, and the jury will disregard any inference or implication from that question. He was convicted, is that correct?

Mr. Britt: Yes, Your Honor.

The Court: He was sentenced, is that correct?

Mr. Britt: Yes, Your Honor.

The Court: All right.

Mr. Britt: May I make a proffer?

Let the record show that if the defendant were permitted to answer the question he would testify that the matter was investigated by the Governor of the State of Ohio and the sentence was commuted to unarmed robbery.

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(Tr. 491)

And, as a result—I will hand you what's been marked Defendant's Exhibit I and I-1. Can you tell us what those are?

A. This is the resume which I prepared for Mr. Maley and Mr. Rathbun as to—

Mr. Bell: If the Court please, anything further than this I would object.

(Tr. 492)

The Court: Sustained. Did he give those to the Agents?

Mr. Britt: I am going to try to develop that. I don't think actually given to them but they were displayed to them. May I develop it a little further at this time?

Mr. Bell: I object, Your Honor, from here on.

The Court: These are notes, self-serving statements which he made for himself and he is testifying now as to his own recollection. If he needs notes to refresh his recollection and it can be established that they are the kind of notes that may be used to refresh recollection, I see no difficulty with that, but I don't know where this is leading. If it is leading toward the admission of those notes into evidence, it appears they are not admissible.

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(Tr. 520).

Mr. Britt: I think any that are not admitted we offer. Are you objecting to two?

Mr. Bell: Yes.

The Court: What are they? Tell me the names of them. I know what they are.

Mr. Britt: The numbers? One of them is I and I-1 and B and B-1.

The Court: Defendant's Exhibit I and I-1 and B and B-1, is that correct?

Mr. Britt: Yes, Your Honor.

The Court: Are not admissible. The objection will be sustained.

Mr. Britt: Defense rests, Your Honor.

The Court: Rebuttal?

James Ora Seymour,

called as a witness in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bell:

Q. State your name, please? A. James Ora Seymour.

Q. Where is your residence? A. 1595 Bryden Road.

(Tr. 521)

Q. Columbus, Ohio? A. Yes, sir.

Q. Do you know one Robert Hall Lewis, Jr.? A. Yes, sir.

Q. Is he in the court room today? A. Yes, sir. The man in the brown suit, right there.

Mr. Bell: Let the record show that the witness has identified the defendant.

The Court: The record may so show.

Q. Now, Mr. Seymour, were you ever an employee of Mr. Lewis? A. Well, indirectly, yes.

Q. What do you mean by that? A. I worked for his mother.

Q. And, where did you work for his mother? A. Turfside Supper Club and 935 East Broad Street, and Broad Summit Motel.

Q. Do you know one Charles Edward Bebout? A. Yes, sir.

Q. Have you ever been in the presence of Mr. Bebout and Mr. Lewis? A. Yes, sir.

Q. Were you in the presence in November 1962? A. Yes, sir.

Q. Tell us approximately the day or date of November? A. About the middle of November.

(Tr. 522)

Q. Where was this? A. YMCA on Long Street.

Q. Tell us what took place? A. Mr. Lewis and I had picked up Mr. Bebout, took him to Turfside Supper Club and went past the Southern Bank down on South High Street, and Mr. Lewis told Mr. Bebout this bank was robbed last year and no one had been caught, and then we went on down to the Supper Club.

Q. Were you in their presence after they got to the Supper Club? A. Yes, sir.

Q. For how long? A. The rest of the evening.

Q. Anything unusual happen that evening, to your knowledge? A. No.

Q. Did you see Mr. Bebout and Mr. Lewis together after that? A. Yes, sir, next day.

Q. And, where did you see them? A. Southern Theater.

Q. What took place at that time? A. We had went to a Gray's drug store at Main and High and bought a map of Columbus.

Q. Why did you buy this map of Columbus? A. To mark a get-away for the South High Street Bank.

(Tr. 523)

Q. Now, tell us what you mean by that, Mr. Seymour? A. Well, we stopped—

Q. Who do you mean, we? A. Mr. Lewis and Mr. Bebout and myself.

Q. All right. Had you discussed this South High—

Mr. Britt: Your Honor, I am going to object to all this. Certainly not proper rebuttal. I don't know what it is rebutting.

The Court: I think I know what it is rebutting. Continue.

Q. Go right ahead. A. What was the last question?

Q. Where did you discuss this South High bank situation? A. Well, in Mr. Lewis' Cadillac, green Cadillac. We had discussed several times about robbing South High Street bank, and one day in particular we was down at Schottenstein's Department Store and we clocked how long it would take from there to the—down Williams Road over to the bank, and it took us a little better than three minutes.

Q. Who do you mean by us? A. Mr. Lewis and Bebout and myself.

Q. Whose car were you in? A. Mr. Lewis' Cadillac.

Q. About when was this? By that I mean month and day and date? (Tr. 524) A. Latter part of November.

Q. What year? A. '62.

Q. Did you proceed to carry out your plans concerning the Great Southern Bank? A. No, sir.

Q. Why not? A. I don't know.

Q. Did you see Mr. Bebout and Mr. Lewis together after this? A. Yes, sir.

Q. When? A. December 15.

Q. Where did you see them? A. In the alley behind 935 East Broad Street.

Q. What were they doing there? A. Setting in the automobile.

Q. Whose automobile? A. Mr. Lewis's.

Q. How close were you to them? A. I leaned against the automobile.

Q. Did you talk with them? A. Yes, sir.

Q. Did you hear Mr. Lewis say anything? A. Oh, he just asked me how I was doing on the remodeling.

(Tr. 525)

Q. All right.

Mr. Britt: I didn't get that last word. On the what?

The Witness: Remodeling.

The Court: What car were they getting out of?

The Witness: They weren't. They were in an automobile.

The Court: Whose?

The Witness: Mr. Lewis's.

The Court: What color?

The Witness: Green Cadillac.

By Mr. Bell:

Q. Now, did you see Mr. Lewis later on that day? A. Yes, sir.

Q. Where? A. Turfside Supper Club.

Q. Where in the Turfside Supper Club did you see him? A. At the office.

Q. What was he doing? A. Wrapping Christmas gifts.

Q. Did you see what those gifts were? A. No, sir. He told me to stay out of the office, he had a gift for me, he didn't want me to see what it was.

Q. Now, you stated you worked at the motel. What was (Tr. 526) the name of that motel? A. Broad Summit Motel.

Q. Were you ever out there with Mr. Lewis? A. Yes, sir.

Q. How soon after December 15, 1962 were you there with Mr. Lewis? A. First or 2nd of January.

Q. What took place at that time? A. He had gave me a brown briefcase to hide for him.

Q. Describe the briefcase? A. Oh, about this long, about that high, about this wide, and had a couple things on top that you pushed them and the lid flew up.

Q. What color was it? A. Tan color.

Q. Could you tell whether it was rather new or old? A. It was brand new.

Q. What did he tell you about this case? A. Told me the police were hunting it.

Q. And, what did he ask you to do with it? A. Hide it. And so I hid it in an old shed out there under a cardboard box.

Q. Now, how many times did you see Mr. Bebout? A. Several times.

Q. Did you ever see Mr. Bebout with a gun? (Tr. 527) A. Yes, sir.

Q. Can you describe that gun for us, please? A. 45 automatic, blue steel.

Q. Did Mr. Bebout ever have that gun in your presence and in the presence of the defendant, Robert Hall Lewis, Jr.? A. Yes, sir.

Q. When was this? A. All during, the part I seen him, in November and December.

Q. Did you ever buy any ammunition for this gun? A. No, sir, I never did.

Q. Did you see Mr. Lewis or Mr. Bebout buy ammunition for it? A. Mr. Lewis and Mr. Bebout and myself, we all went to Woolco's one day and he bought a box.

Q. Then what did you do? A. Went to Turfside.

Q. What did you do with the gun? A. Hid it on top of a telephone booth.

Q. Did you ever shoot the gun? A. Yes, sir.

Q. In the presence of Mr. Lewis? A. I never did in his presence. He shot in my presence.

Q. Mr. Lewis did? A. Yes.

Q. Was Mr. Bebout present at this time? (Tr. 528) A. Yes, sir. He had also target practiced with it.

Q. Now, Mr. Seymour, have you ever been arrested and convicted of a felony in violation of the laws of the State of Ohio? A. Yes, sir, twice.

Q. Are you presently in litigation against the Lewis's? A. Yes.

Q. Did that matter in any way affect your testimony here under oath today?

Mr. Britt: Object.

The Court: Sustained.

Mr. Bell: You may cross examine.

The Court: The Court will recess for ten minutes.

(Recess.)

Cross Examination

By Mr. Britt:

Q. Mr. Seymour, how long did you work for the Lewis family? A. Approximately eleven months.

Q. Where were you prior to that? A. Ohio Penitentiary — no, wait a minute, I was at home with my parents two months.

Q. Where is that? (Tr. 529) A. Route 1, Groveport, Ohio.

Q. And, what are the felony convictions that you have? A. 1957 convicted for assault with intent to commit a robbery, and 1960 I was again arrested in Columbus, transported to Athens County for burglary and grand larceny, and while I was incarcerated I broke jail and got another one to five term against me.

Q. All right. Now, when did you leave working for the Lewis's? A. Around the first of June.

Q. And when you were leaving Mrs. Lewis asked you where you were going to go, didn't she? A. No. She didn't know I was leaving at the time.

Q. Did you talk with her at all about your leaving there? A. No, I didn't.

Q. Did you state to Mrs. Lewis that you weren't going to work any more, that you had found yourself a way whereby you wouldn't have to work any more? A. No.

Q. Never made a statement like that to her? A. No.

Q. And, do you recall an occasion in late July of this year when you called the Turfside Club at night and talked to Betty Lewis, the defendant's sister? A. Yes.

(Tr. 530)

Q. And, also to Elsie, who was on the phone. Do you recall that? A. Yes, sir.

Q. And, do you recall stating to them on the phone that if you had some money so that you could get away, you wouldn't have to come in to court and tell these lies? A. No, I did not.

Mr. Bell: Just a moment, Your Honor, I object as to the phrasing of the question.

Mr. Britt: I think that's almost exactly the way it was stated, as I understand it.

The Court: Not by this witness according to his testimony.

Mr. Britt: That's right.

The Witness: I can quote what I said that night.

The Court: Just a moment. Wait a minute. Would you gentlemen approach the bench, because I can see there is going to be difficulty because of the order which this witness has been called.

* * * * * * * * * * * *

(Tr. 562)

The Court: Yes, and I want to go one step further. I have the feeling that everybody here knew this man was going to testify. As a matter of fact, I mentioned it the other day at the bench here when I called the two of you up, and before the Government rested I said, "You are resting without calling Seymour to the stand?", and he said he will use him for rebuttal, and at that time I looked a little askance at the prosecutor wondering how that could be rebuttal. I think it is in part rebuttal, but I think I

ought to state for the record that it is a little unusual. I do feel a more proper order (Tr. 563) would have been to put him in on chief and we would not have run into this problem. We may still have run into the problem of producing the notes.

* * * * * * * * * * * *

(Tr. 571)

The Court: Hand me that second statement, the one taken on the 25th.

On March 25, 1963, apparently, you talked to the Agents, is that correct?

The Witness: Yes, sir.

The Court: To Wayne Morris and Donald Rathbun?

The Witness: Yes, sir.

The Court: At that time you stated that on one occasion around Thanksgiving of 1962 you entered Lewis' office at the Turfside Club where Lewis and Bebout were engaged in conversation?

The Witness: Yes, sir.

The Court And, did you state at that time that you heard Bebout say, "I should rob this bank"?

The Witness: Yes, sir.

Mr. Britt: Your Honor, I wonder if we might have exceptions to this?

The Court: Yes. This statement is not (Tr. 572) going into evidence and all that has gone in are some excerpts from it.

Mr. Britt: The other one is in completely.

The Court: The other statement is not in completely. Only a portion of it.

Mr. Britt: As far as the facts he has testified to, Your Honor, it is.

The Court: And, you told the Agents at that time that you had no other conversation at that time; that is, except that you were relating that you heard Mr. Bebout say, "I should rob this bank"?

The Witness: Yes, sir.

The Court: Other than that you had no other conversation, is that right?

The Witness: No, sir. That same day, Your Honor, while I was in the office Mr. Bebout had his 45 out and shot a hole through the wall of the building.

The Court: Now, you stated, then, that it was a few days later while you were talking to Bebout at the bus terminal in Lewis' automobile, that Bebout asked you to rob a bank with him?

The Witness: Yes, sir.

The Court: You told that to the Agents?

The Witness: (Nodding affirmatively.)

(Tr. 573)

The Court: But you did not say anything about whether Mr. Lewis was present, is that correct?

The Witness: Right.

The Court: At least it is not in the statement?

The Witness: Right.

The Court: And it was at that time that you offered to introduce Bebout to Jim Graham?

The Witness: Yes, sir.

The Court: Now, you also related to the Agents that time—that's on March 25, 1962—that sometime during the latter part of November 1962 you participated in a discussion with Bebout and Lewis on the robbery of the Great Southern Office of the Ohio Federal Savings and Loan Association?

The Witness: Yes, sir.

The Court: Is that correct? Is that what you said to the Agents?

The Witness: Yes, sir.

The Court: Now, I am not trying to put these words in your mouth. If you didn't say this, then you should tell me so.

The Witness: Yes.

The Court: Is that what you told the Agent?

(Tr. 574)

The Witness: Yes, sir.

The Court: In March?

The Witness: Yes, sir.

The Court: Or, the Agents. And, did you then also tell them that it was planned to steal an automobile at the Great Southern Shopping Center, rob the bank and have a second car to make a get away?

The Witness: Yes, sir.

The Court: And, did you tell them that you had driven Bebout and Lewis to the Great Southern Office on one or two occasions and Bebout had entered the institution for the purpose of changing bills?

The Witness: Yes, sir.

The Court: Now, did you do that?

The Witness: Yes, sir.

The Court: In other words, you told the Agents that and you also did it, in fact, is that correct?

The Witness: Yes, sir.

The Court: Again, I am putting these statements in the affirmative and it may appear to be cross examination, but I am not trying to cross examine you, I am just trying to find out what you did tell the Agents, and will make sure that the jury understands this is pretty much all of what you told them.

(Tr. 575)

The Witness: Yes, sir.

The Court: If you did not make these statements, say so now?

The Witness: I made the statements.

The Court: Now, you also told the Agents that you had never heard Bebout or Lewis discussing any plans to rob any other bank institution, particularly the Upper Arlington Office of the Ohio Federal Savings and Loan and the Peoples Savings and Loan Association on East Broad Street?

The Witness: Yes, sir. They asked me about them and I said, "No, we never discussed it."

The Court: You never heard them discuss it or it had not been discussed in your presence?

The Witness: (Nodding affirmatively.)

The Court: Is that what you told the Agents?

The Witness: Yes, sir.

The Court: Then you also told the Agents on that day that you had been with Bebout when Bebout purchased ammunition for his 45 caliber pistol in the Woolco Department Store in the Great Southern Shopping Center, is that correct?

The Witness: Yes, sir. I was also with Mr. Lewis.

(Tr. 576)

The Court: And that Bebout and Lewis had fired this pistol in the basement of the Turfside Club?

The Witness: No, sir. I had fired the gun in the basement of the Turfside. There was an old building set beside the Turfside. It had a little phone box on it and Mr. Bebout and Mr. Lewis shot at this phone box.

The Court: All I am asking you now, is that what you told the Agents?

The Witness: Yes, sir.

The Court: You told the Agent that you, Bebout and Lewis had fired this 45 pistol in the basement of the Turfside Club, is that correct?

The Witness: No, sir.

The Court: Are you saying that you did not tell the Agent that?

The Witness: I may have told them that but I don't recall. I think they made a mistake. I told them we fired the gun outside at the old building and then I got it off the phone booth one day and took it down myself and fired it in the basement.

The Court: So then, insofar as you recall, you did not tell the Agent what I read to you just now?

(Tr. 577)

The Witness: Right.

The Court: I have tried not to cover things in this statement that were not covered in the examination, both direct and cross.

Anything further of this witness?

Mr. Britt: No, Your Honor.

Mr. Bell: No, Your Honor.

The Court: Anything further in connection with those statements?

Mr. Bell: No, Your Honor.

The Court: You may step down.

* * * * * * * * * * *

(Tr. 638)

The Court: Ladies and gentlemen of the Jury, have you reached a verdict?

Do not announce it.

Mr. Denman: We have, Your Honor.

The Court: Would you hand it to the Clerk, please.

The Clerk will read the verdict.

The Clerk: "United States District Court for the Southern District of Ohio, Eastern Division. United States of America vs. Robert Hall Lewis, Jr., Criminal No. 8263. We, the Jury, find the defendant, Robert Hall Lewis, Jr., guilty in the manner and form as charged in the one count of the indictment." Signed Charles E. Denman, Sr., Foreman, and signed on the reverse by the remaining eleven jurors. And, so say you all?

* * * * * * * * * * *

UNITED STATES DISTRICT COURT
for the
Southern District of Ohio, Eastern Division

United States of America	
v.	*No. 8263*
Robert Hall Lewis, Jr.	*18 USC 2113(c)*
	1 count

[Filed October 1, 1963]

On this *1st* day of *October*, 19*63* came the attorney for the government and the defendant appeared in person and[1] *by counsel.*

It Is Adjudged that the defendant has been convicted upon his plea of[2] *not guilty and a Jury verdict of guilty* of the offense of *did unlawfully, wilfully and knowingly, receive, possess, conceal, store, and dispose of money of an amount in excess of ($100.00) dollars, said defendant then and there well knowing said money to have been unlawfully taken and carried away with intent to steal and purloin said money from the care, custody and control of a savings and loan association the deposits of which were at the aforesaid time insured by the Federal Savings and Loan Insurance Corporation* as charged[3] *in the one count* and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sen-

no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment[4] *pursuant to Title 18, United States Code, Section 4208(a)(2) for a period of Ten (10) years; the prisoner may become eligible for parole at such time as the board of parole may determine.*

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ FRANK J. BATTISTI,
United States District Judge.

The Court recommends commitment to:[5]

/s/ JOHN D. JYTER,
Clerk.

---

tence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court wishing to recommend a particular institution.

No. 15699

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ROBERT HALL LEWIS, JR.,
Defendant-Appellant.

APPEAL from the United States District Court for the Southern District of Ohio, Eastern Division.

Decided November 20, 1964.

Before CECIL, O'SULLIVAN and PHILLIPS, Circuit Judges.

PHILLIPS, Circuit Judge. The Town and Country Branch of the Ohio Federal Savings and Loan Association Franklin County, Ohio, was robbed of $35,000 on December 14, 1962. Charles Edward Bebout entered a plea of guilty to committing this robbery and is now serving a prison sentence.

Robert Hall Lewis, Jr., defendant-appellant in the present case, was found guilty by a jury of receiving a part of the proceeds of this robbery in violation of 18 U.S.C. § 2113(c)[1] and was sentenced to a maximum prison term of ten years.

Bebout testified as a prosecution witness against defendant. He and other witnesses testified before the jury to the following effect: Bebout and defendant have known each other since 1952. In 1954 Bebout lived in a house in Columbus, Ohio, which he rented from defendant's mother. In October 1962 Bebout returned to Columbus, contacted defendant and began to discuss with him the robbing of a

[1] "(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any property or money or other thing of value knowing the same to have been taken from a bank, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker."

bank. Bebout robbed the savings and loan association on Friday December 14, 1962, with the knowledge of defendant, and used defendant's 1959 Cadillac as a getaway car. After the robbery the two met in the Columbus Public Library, then proceeded to a local motel and counted the money. On this occasion defendant received $300.00 of the stolen money from Bebou. On the following day they met again at the motel bar, had a drink, then went to Bebout's room, where defendant received from Bebout $6,700 in additional money as his share of the proceeds from the robbery, carrying it away in a tan Samson attache case. On Sunday December 16, the two met again, placed the remainder of the stolen money in a box and gift wrapped it as a Christmas package, with "Mother" written on the outside, and placed the package in the back seat of defendant's Cadillac. Defendant thereupon drove Bebout to Wheeling, West Virginia, where they registered at a motor inn. Bebout was arrested December 26 in Chicago.

After defendant returned to Columbus from Wheeling on December 17, and during the period that he was being interviewed by F.B.I. agents, he took a gift-wrapped package to the home of a friend, Charlotte See, and asked her to keep it for him. This package was stolen from the home of Miss See by one James Long, who discovered that it contained about $5,000 in currency in denominations of twenties, tens, fives and ones. After Miss See had informed the defendant that the package had been stolen, she received a series of telephone calls from unidentified parties demanding that the package be recovered. In one of the calls she was instructed to deliver the package, when returned, to a local attorney. Long spent part of the stolen money on a western trip, but Miss See was successful in recovering from him approximately $1,100. Miss See had the package containing this money delivered to the designated Columbus attorney, in accordance with the telephone instructions she had received. The attorney placed the package in a safe at a Columbus motel. Later he was contacted by F.B.I. agents and turned the money over to them. The F.B.I. checked the currency in this package against a list of serial numbers of the stolen money, and found that there was "bait" money among the bills, identified as having been stolen from the savings and loan association on December 14.

The case was argued and submitted to this court on June 4, 1964. Shortly prior to this hearing defendant-appellant had filed a motion in this court to remand the case for a new trial on grounds of newly discovered evidence, or in the alternative for a continuance until such time as an investigation could be made of the affidavit of Bebout thereto attached, which was the alleged newly discovered evidence upon which the motion was based. In this affidavit Bebout stated under oath as follows:

> "Affiant further says that all statements and testimony given against Robert Hall Lewis, Jr., implicating the said Lewis in a robbery of the Town and Country branch of the Ohio Federal Savings and Loan Association, on or about December 14, 1962, are and were false in every respect. Affiant further says that such crime was committed by the said affiant and that at no time were said facts disclosed to the said Robert Hall Lewis, Jr., nor did affiant ever turn over to the said Robert Hall Lewis, Jr., any of the proceeds of said robbery."

This court ordered that consideration and decision of this appeal be held in abeyance pending the filing of a motion for a new trial in the District Court and until the trial judge has certified to this court whether he would grant a motion for a new trial or deny it if the case be remanded to the District Court for a ruling on the motion.

On September 3, 1964, the District Court conducted a hearing on the motion for a new trial and heard additional testimony from Bebout in which this witness recanted his previous testimony implicating defendant in the robbery. The District Judge thereupon overruled the motion for a new trial and his action has been certified to this court. The transcript of the proceedings at the hearing on the motion for a new trial and supplemental briefs also have been filed with this court.

Only three of the questions raised on the appeal require discussion: (1) Did the trial judge err in denying defendant's motion for a new trial on grounds of the newly discovered evidence set forth in Bebout's affidavit? (2) Did the trial judge commit prejudicial and reversible error in interrogating witnesses? and (3) Was the testimony sufficient to permit the issue of defendant's guilt or innocence to be determined by the jury?

1) Motion For a New Trial

The trial court may grant a new trial to a defendant "if required in the interest of justice." Rule 33, Federal Rules of Criminal Procedure.

As said by this court in *Winer* v. *United States*, 228 F.2d 944, 952 (C.A. 6), cert. denied, 351 U.S. 906:

> "The granting or refusing of a new trial upon newly discovered evidence of an impeaching character, including the recantation of a witness, rests in the sound discretion of the trial court; and a new trial will not be granted on the grounds of newly discovered evidence, unless such evidence is of a nature that, on a new trial, it would probably bring about a different result. It is for the trial judge to determine the probable effect it would have in changing the result of another trial; and in the absence of a clear showing of abuse of discretion, his action must stand."

To like effect see *United States* v. *Barnhill*, 305 F.2d 164 (C.A. 6), cert. denied, 371 U.S. 865; *Ashe* v. *United States*, 288 F.2d 725, 733 (C.A. 6).

In *United States* v. *Johnson*, 327 U.S. 106, 111, the Supreme Court said:

> "[W]e think it important for the orderly administration of criminal justice that findings on conflicting evidence by trial courts on motions for new trial based on newly discovered evidence remain undisturbed except for most extraordinary circumstances, ..."

In *United States* v. *Troche*, 213 F.2d 401, 403 (C.A. 2), the Court said:

> "Where the newly discovered evidence consists of recantation of testimony given at the trial, such recantation is 'looked upon with the utmost suspicion,' as this court pointed out in Harrison v. United States, 2 Cir., 7 F.2d 259, 262. The motion should be granted only when 'the court is reasonably well satisfied that the testimony given by a material witness is false,' . . . ."

In this case the trial judge heard the testimony of Bebout at the trial and again at the hearing on the motion for a new trial. He was exceptionally well qualified to

pass upon the truth or falsity of Bebout's affidavit. At the close of the latter hearing, he made an affirmative finding as follows: "This Court is of the opinion, and concludes, under all of the circumstances, that the Affiant's affidavit submitted to this Court is false and that the . . . witness told the truth at the trial."

During the trial before the jury the defense introduced various letters written from prison by Bebout to defendant and a recantation by Bebout of all statements made by him implicating defendant in the robbery, all written at a time when Bebout was urging defendant and his mother to arrange for his release on bond. This court has read the complete transcript of Bebout's testimony before the jury, and also the transcript of his testimony at the hearing on the motion for a new trial. His testimony before the jury was detailed and explicit, but at the later hearing his answers were general and vague. It was reasonable for the trial judge to conclude that the latest affidavit of this witness, relied upon in support of the motion of a new trial, was simply another in a series of contradictory documents reflecting upon the credibility of the witness, and that this affidavit should be rejected as false.

As said by this court in *Gordan* v. *United States*, 178 F.2d 896, 900 (C.A. 6), cert. denied, 339 U.S. 935:

> "In the instant case, the first and primary ground, above set forth, for granting a new trial is lacking. The district court was not reasonably well satisfied that the testimony given by Banning on the trial was false. On the contrary, the court believed Banning's statements in his affidavits recanting his testimony on the trial were false. Under the circumstances, this was not an unreasonable conclusion."

2) Interrogation by Trial Judge

Appellant complains that during the five-day trial, the District Judge asked more than 1100 questions of various witnesses, and contends that this constitutes prejudicial and reversible error.

This court said in *Knapp* v. *Kinsley*, 232 F.2d 458, 466 (C.A. 6), cert. denied, 352 U.S. 892:

> "The trial judge in the federal court is more than a mere arbitrator to rule upon objections and to instruct the jury. It is his function to conduct the trial

> in an orderly way with a view to eliciting the truth and to attaining justice between the parties. It is his duty to see that the issues are not obscured and that the testimony is not misunderstood. He has the right to interrogate witnesses for this purpose."

To like effect see *Glasser* v. *United States*, 315 U.S. 60.

The right of a trial judge to interrogate witnesses and comment on the evidence is not unlimited. *Quercia* v. *United States*, 289 U.S. 466, 470. While he may examine those who testify, "he nonetheless must remain the judge, impartial, judicious, and, above all, responsible for a courtroom atmosphere in which guilt or innocence may be soberly and fairly tested. Because of his proper power and influence it is obvious that the display of a fixed opinion as to the guilt of an accused limits the possibility of an uninhibited decision from a jury of laymen much less initiated in trial procedure than he. He must, therefore, be on continual guard that the authority of the bench be not exploited toward a conviction he may privately think deserved or even required by the evidence." *United States* v. *Brandt*, 196 F.2d 653, 655 (C.A. 2).

"The test is not the number of questions the trial court asks." *United States* v. *DeFillo*, 257 F.2d 835, 839 (C.A. 2), cert. denied, 359 U.S. 915. "The test is whether, because of such questioning, the defendant was prejudiced." *United States* v. *Kelly*, 329 F.2d 314, 315 (C.A. 3); *Woodring* v. *United States*, 311 F.2d 417 (C.A. 8), cert. denied, 373 U.S. 913.

While the trial judge in the instant case asked an unusually large number of questions, we do not find that his questions were so phrased as to indicate any opinion on his part as to the veracity of the witnesses or as to the guilt of defendant. The judge asked only one question of defendant. Most of his questions were directed to Miss Charlotte See, a witness for the prosecution. The facts brought out by these questions reflected to some extent upon the credibility of this witness, and were of such a nature that they could have been helpful to defendant rather than hurtful. At the end of his questioning of Miss See, the trial judge gave counsel for both parties an opportunity to ask additional questions of this witness, and counsel for defendant proceeded to cross-examine her at great length. Other questions asked by the judge tended to clarify and summarize the testimony. The charge to

the jury contained explicit instructions that no inferences were to be drawn from these questions.[2]

While the large number of questions asked by the trial judge is not to be commended as a desirable practice, we hold that these questions do not constitute prejudicial and reversible error on the record in this case.

3) Sufficiency of The Evidence

In addition to reading the appendices submitted by both parties, this court has read the entire transcript of the evidence at the trial, consisting of 645 typewritten pages, and the transcript of the hearing on the motion for a new trial, consisting of 51 typewritten pages. Bizarre facts are disclosed by the record, such as the action of defendant in wrapping approximately $5,000 in currency in a package camouflaged as a Christmas gift and entrusting its safekeeping to Miss See. Yet Miss See's testimony is clear that defendant delivered this package to her. Defendant apparently adopted the psychology of Edgar Allen Poe's "*The Purloined Letter*" and believed that F.B.I. agents would never find the gift-wrapped package where it was kept on a television set in Miss See's bedroom. The evidence is convincing that this package contained part of the money stolen from the savings and loan association. We find that the evidence was sufficient to take the case to the jury and to support the verdict of guilt beyond a reasonable doubt.

Defendant has argued and briefed other issues on this appeal, all of which have been considered and found to be without merit.

Affirmed.

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[2] The trial judge charged the jury as follows on this point:

"You are further instructed, ladies and gentlemen, that if the Judge has said or done anything which has suggested to you that he is inclined to favor the claims or positions of either of the parties, you will not suffer yourselves to be influenced by any such suggestion.

"I have not expressed, nor have I intended to express, any opinion as to what witnesses are or are not worthy of credence or what inference or inferences should be drawn from the evidence adduced in this case.

"During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you as jurors are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts."

No. 15699

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ROBERT HALL LEWIS, JR.,
Defendant-Appellant.

ORDER

[Filed February 10, 1965]

Before Cecil, O'Sullivan and Phillips, Circuit Judges.

The motion of defendant-appellant for an order granting the right to take the deposition of Charles E. Bebout is overruled.

The petition for rehearing is hereby denied.

Entered by Order of the Court:

/s/ Carl W. Reuss,
Clerk.

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709-854—65

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 980

ROBERT HALL LEWIS, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 110a–116a) is reported at 338 F. 2d 137.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 1964 and rehearing was denied on February 10, 1965. The petition for a writ of certiorari was filed on March 12, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court committed prejudicial error in questioning witnesses.

2. Whether petitioner was deprived of substantial rights in a hearing on a motion for new trial when

the judge, on suggestion of defense counsel and without objection, conducted the interrogation of the recanting prosecution witness.

3. Whether the trial court abused its discretion in dismissing a motion for a new trial upon an affirmative finding that a recanting prosecution witness told the truth at the trial.

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the Southern District of Ohio of unlawfully, wilfully and knowingly receiving the proceeds of the armed robbery of a Federal Savings and Loan Association in violation of 18 U.S.C. 2113(c) (R. III, 638).[1] He was sentenced to imprisonment for a period of ten years (Pet. App. 108a–109a). Petitioner appealed on the grounds, among others, that the trial judge committed prejudicial error in questioning witnesses and that the evidence was insufficient to go to the jury. While the appeal was pending, one of the government witnesses executed an affidavit recanting his trial testimony. The court of appeals held the appeal in abeyance pending consideration by the trial court of a motion for a new trial based on newly discovered evidence. The trial court held a hearing on the motion in which it considered affidavits filed by both sides (R. V, 27–28) and additional testimony of the recanting witness (R. V, 29–46). The trial court affirmatively found "that

[1] The record is in six volumes. Volumes II–III is the transcript at trial. Volume V is the transcript of the hearing on the motion for a new trial.

under all the circumstances of this case, it is clear to this Court that this material witness, Mr. Bebout, did not tell the truth in this affidavit and * * * told the truth in the trial" (R. V, 49). Accordingly, it denied the motion for a new trial. The court of appeals affirmed the conviction. 338 F. 2d 137.

The evidence at trial may be summarized as follows:

The petitioner and Charles Edward Bebout have known each other since 1952 (R. II, 292). Mr. Bebout came to Columbus, Ohio in October 1962 and communicated with petitioner (R. II, 293). About a week later they discussed the robbing of a bank (R. II, 307–308). On December 14, 1962, with the knowledge and assistance of petitioner, Mr. Bebout robbed the Ohio Federal Savings and Loan Company, using petitioner's 1959 Cadillac as a getaway car (R. II, 283–286). Mr. Bebout and petitioner met and counted the proceeds of the robbery, amounting to almost $35,000 (R. II, 286–287). At that time, petitioner received about $300 (R. II, 288). The next day, Saturday, December 15, 1962, petitioner again met Mr. Bebout and received an additional $6,700 of the stolen money (R. II, 288–289). On Sunday, December 16, 1962, petitioner drove Mr. Bebout to Wheeling, West Virginia and returned alone to Columbus the next day (R. II, 289, 304–307, 310).

Between December 17–26, a period in which he was being intermittently interviewed by the F.B.I. (R. III, 509–517), petitioner went to the home of one Charlotte See and left a package (R. II, 23–24, 38). This package was stolen from the home of Miss See by one James Long (R. II, 24–25, 93–95), who found

that the package contained about $5,000 (R. II, 95). Miss See learned that Long had taken the package (R. II, 25) and told him to return it (R. II, 56, 95). Instead, he made a trip to the west coast, spending the money as he went (R. II, 95–96). Miss See also advised petitioner that the package had been stolen (R. II, 37). Thereafter, she received several anonymous telephone calls concerning it. On one occasion she was instructed to deliver what James Long returned to her to attorney Joseph Hans (R. II, 26, 45–46). Mr. Long came back from the west coast and returned to Miss See some $1100 of the money he had taken from her home (R. II, 44, 97–99), which money she delivered to Joseph Hans (R. II, 45, 176–177). Mr. Hans was approached by the F.B.I. and turned the money over to them (R. II, 181). This money was checked against a list of serial numbers of bills recorded as a part of the bank's precautions against robbery, and it was found that some of the "bait money" was among the bills given by Mr. Hans to the F.B.I. (R. II, 233–236, 266).

ARGUMENT

1. There is no merit in petitioner's assertion that questioning of witnesses by the trial judge prejudiced him. We count 478 questions asked by the judge, not the "in excess of 1,100 questions" alleged by petitioner (Pet. 10). More than half of those questions were directed to two witnesses testifying to the confusing circumstances surrounding the theft and recovery of the package left by petitioner at the home of Charlotte See (R. II, 55–73, 87–91, 145–160).

Much of the questioning reflected on the credibility of Miss See and could only have been helpful to petitioner (R. II, 60–61, 87–91). Petitioner cites no question that in any way indicates an opinion of the judge as to the truthfulness of the witness or the guilt of the defendant. At no time during the trial did defense counsel object to questions asked by the court. At the close of all the evidence, the trial judge instructed the jury as follows (R. III, 633):

> You are further instructed, ladies and gentlemen, that if the judge has said or done anything which has suggested to you that he is inclined to favor the claims or positions of either of the parties, you will not suffer yourselves to be influenced by any such suggestion.
>
> I have not expressed, nor have I intended to express, any opinion as to what witnesses are or are not worthy of credence or what inference or inferences should be drawn from the evidence adduced in this case.
>
> During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you as jurors are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

The court of appeals read the entire trial transcript and concluded that the questions asked by the trial court were not so phrased as to indicate an opinion "as to the veracity of the witnesses or as to the guilt of defendant" (Pet. App. 115a–116a). The conduct of the trial court in this instance was in accordance with

its duty to question witnesses for the purpose of eliciting the truth and assuring that issues are not obscured or testimony misunderstood. See *Glasser* v. *United States*, 315 U.S. 60, 82; *Knapp* v. *Kinsey*, 232 F. 2d 458, 466 (C.A. 6), certiorari denied, 352 U.S. 892; *Griffin* v. *United States*, 164 F. 2d 903 (C.A.D.C.).

2. Petitioner's assertion that he was prejudiced on his motion for a new trial by the trial court's "refusal" to permit defense counsel to ask any questions of the recanting prosecution witness is refuted by the record. The court never denied counsel permission to ask questions. The procedure employed was suggested by defense counsel midway in the proceedings (R. V, 22–23) and confirmed at the time the witness was to be called, when the court asked defense counsel if "it is your suggestion then that the Court examine him on the matter?" (R. V, 27). Counsel replied that "[we] would be perfectly satisfied for the Court to do it, although we would have some questions we would like to ask him" (R. V, 27). The judge made it clear at this point that he thought he could decide on the basis of the affidavits alone but wanted to hear the whole matter (R. V, 27–28). During examination the witness recanted his trial testimony without reservation. Neither prosecution nor defense counsel examined the witness or objected to the procedure followed. Both apparently were satisfied that further examination was unnecessary. Indeed, defense counsel indicated his satisfaction with the results, saying that "I think it is fully in the record unequivocally and unreserved" (R. V, 46) and that "we feel that the Court has heard all of the evidence in this case

with this unequivocal denial * * *" (R. V, 46). If the remarks quoted by petitioner are read in context, it is plain that there was no "hostility" or "advocacy tactics" in the trial court's conduct of the hearing.

3. The recantation of Mr. Bebout did not require the granting of a new trial. Prior to trial, Mr. Bebout wrote a memorandum "To Whom It May Concern," recanting the testimony he gave before the grand jury—testimony which was substantially the same as that which he later gave at the trial (R. III, 363). At trial, however, the witness repeated the grand-jury testimony in convincing detail and withstood extensive cross-examination, in which it was brought out that he had written the recanting memorandum. The question of recantation, therefore, was considered by the jury, and the verdict of conviction necessarily implied that the jury believed the trial testimony and disbelieved the recantation. Subsequently, Mr. Bebout executed an affidavit, stating that his grand-jury testimony was the product of duress and that his trial testimony was false. But at the hearing on the motion for new trial, Bebout's testimony regarding the alleged coercion fluctuated considerably (R. V, 31–40). We note, moreover, that by the time of the trial, Bebout had already been sentenced for his part in the bank robbery and the time for reduction of sentence had expired (R. V, 24–26). There was no incentive for him to give false testimony at that point. The trial judge who heard the testimony and observed the demeanor of the recanting witness both at the trial and at the post-trial

hearing was convinced that it was the recantation, rather that the testimony, which was false.

Moreover, the circumstances in which the affidavit of recantation was executed cast serious doubt upon its veracity. About a month before Bebout executed the affidavit recanting his trial testimony, he wrote a series of letters to Robert A. Bell, the Assistant United States Attorney handling the Lewis case. One on April 14, 1964 inquired about a date for the assumed new trial of petitioner (R. IV, 43). Two days later, Bebout again wrote Mr. Bell as follows (R. IV, 44-45):

> I wi[illegible]t to be understood that if, and when I am returned to Columbus, as a government witness, my desire is to be declared "hostile" to the government, and "friendly" to the defense.
>
> I have written Mr. Paul Scott [defense counsel] and advising him of my intentions to "cooperate" ~~with the Lewis interests~~ in every respect.
>
> I have been recommended for transfer to Marion, Ill. *Lets face it.* [Emphasis in the original.] With the Lewis money and power my life would be valueless there.

On May 11, 1964, Bebout wrote Mr. Bell to the effect that he had written the trial judge and defense counsel that his testimony at trial was not the truth, and further stated that "I wish to sign the statements within the week, as I am *definitely* [emphasis in the original] pending transfer to Marion, Ill." (R. IV, 45). On May 18, 1964, seven days later, Bebout executed the affidavit recanting his trial testimony. The United States Attorney felt that these letters show

"a progressive attempt to have the office of the United States Attorney interfere with his transfer on the threat of upsetting the jury verdict in the Lewis case" (R. VI, 5).

Under all the circumstances, the trial court was justified in refusing to credit the recantation. There is no reason to disturb its findings which were concurred in by the court of appeals. *United States* v. *Johnson*, 327 U.S. 106, 111; *Shotwell Manufacturing Co.* v. *United States*, 371 U.S. 341, 356–357.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

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APRIL 1965.

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